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NOTES OF RECENT CASES.

The Chief Justice, Wallace and *Beasley, JJ.*
8th December, 1927.
R. C. No. 10 of 1927.

Income-tax Act, S. 10—Money-lending business—Loss incurred in respect of suretyship transaction—If can be deducted.

The amount of loss incurred by a money-lender in respect of a suretyship transaction by him cannot be deducted from the assessable income.

T. Ramachandra Rao for Assessee.

M. Patanjali Sastri for Commissioner of Income-tax.

N. S.

Phillips and *Madhavan Nair, JJ.*
8th December, 1927.
Cr. App. No. 592 of 1927.

Penal Code, S. 96—Private defence—Plea not set up—Prosecution evidence disclosing—Duty of Court to consider.

Though the accused does not plead the right of private defence, the Court is bound to consider the plea if it is disclosed by the prosecution evidence.

K. Kuttikrishna Menon for Accused.

The Public Prosecutor for the Crown.

N. S.

The Chief Justice, Wallace and *Beasley, JJ.*
8th December, 1927.
R. C. No. 6 of 1927.

Income-tax Act, S. 10 (2) (3)—Assessee carrying on business in British India and outside British India—Capital borrowed in British India but sent to place outside British India—Interest paid on—If can be deducted.

Where an assessee had money-lending businesses in places within British India and also places outside British India and borrowed capital within British India but sent it for the business outside British India,

Held, that the interest paid on this borrowed capital could not be deducted from the assessable income of the business within British India.

K. S. Krishnasami Aiyangar for Assessee.

M. Patanjali Sastri for Commissioner of Income-tax.

N. S.

The Chief Justice and *Anantakrishna Aiyar, J.* *9th December*, 1927. — C. C. C. A. No. 4 of 1926.

Limitation Act, Arts. 11 (*a*) *and* 13—*Scope and applicability.*

Article 11 (*a*) of the Limitation Act does not apply to proceedings under Chap. VII of the Presidency Town Small Causes Courts Act, as the proceedings are not in the nature of a suit and the order passed thereon does not amount to a decree.

25 L. W. 115 followed.

Article 13 of the Limitation Act does not apply in a case where an order was passed dismissing an application for ejectment filed under S. 41 of the Small Cause Courts Act, as such an order is not a final order under S. 49 of the Small Cause Courts Act.

M. S. Venkatarama Aiyar for Appellant.

K. S. Jayarama Aiyar for Respondent.

N. S.

Devadoss, J. *12th December*, 1927. — C. R. P. No. 235 of 1926.

Civil Procedure Code, S. 80—*Notice to Railway Company given under the Railways Act—Railway Company subsequently taken over by Secretary of State—Suit against Railway Company and Secretary of State—Absence of notice to Secretary of State before suit—Effect.*

A consignee of certain goods gave a notice of suit under S. 77 of the Railways Act. Some time after the notice was given the Railway Company was taken over by the Secretary of State. The suit was then instituted both against the Railway Company and the Secretary of State. No previous notice was given to the Secretary of State as required by S. 80, C. P. Code.

Held that, the Secretary of State having taken over the management of the Railway subsequent to notice under S. 77 of the Railways Act, he must be deemed to have taken over the Railway Company subject to the liabilities and the rights of action which had already accrued and therefore notice under S. 80, C. P. Code, to the Secretary of State was not necessary for the institution of the suit.

O. T. Govinda Nambiar for Petitioner.

P. V. Vallabacharulu for Respondent.

N. S.

The Chief Justice, Beasley and *Ananta-krishna Aiyar, JJ.* *14th December*, 1927. — Ref. Case Nos. 3 and 16 of 1927.

Income-tax Act, S. 66—*Point not taken before the Commissioner as one to be referred to the High Court—Power of High Court to direct the Commissioner to make a reference on the point.*

Where the assessee did not ask the Commissioner to refer a particular point to the High Court, the High Court cannot direct the Commissioner to refer that particular point under S. 66 of the Income-tax Act.

Nugent Grant for Assessee.

M. Patanjali Sastri for Commissioner of Income-tax.

N. S.

The Chief Justice, Waller and *Ananta-krishna Aiyar, JJ.* 14*th December*, 1927. — Cr. Appeal No. 449 of 1927.

Criminal Procedure Code, Ss. 423 *and* 439—*Eight persons originally charged by the Magistrate—Discharge of three and committal of rest to Sessions by Magistrate—Acquittal of all by Sessions Judge—Appeal to High Court against acquittal—Power of High Court to set aside order of discharge.*

Eight persons were originally charged with murder but the committing magistrate discharged three persons and committed the rest to the Sessions. The Sessions acquitted all the accused and against this acquittal an appeal was preferred to the High Court by the Government.

Held, that the High Court has jurisdiction to set aside the order of discharge of the three accused by the committing magistrate and to direct them to be committed for re-trial on the same charge as the other five accused when setting aside the order of acquittal by the Sessions Judge.

Nugent Grant, K. P. Gopala Menon and *K. Kuttikrishna Menon* for Accused.

The Public Prosecutor for the Crown.

N. S.

Devadoss, J. 15*th December*, 1927. — Cr. R. C. No. 612 of 1927.

Madras District Municipalities Act—License to coffee hotel-keeper—Subsequent cancellation of license by Chairman of Municipal Council—Subsequent prosecution for doing business without license—Jurisdiction of Criminal Court to go into the validity of the cancellation of the license.

Where a license had been granted to a coffee hotel-keeper by a Municipality and the Chairman purported to cancel the license on a ground not falling within the terms of the license, the act of the Chairman is *ultra vires* of his powers; and if he launches a prosecution against the hotel-keeper for carrying on the business without license, the Criminal Court has jurisdiction to go into the question whether the cancellation of the license was valid or not.

T. R. Ramachandra Aiyar for Municipal Council.

M. Patanjali Sastri for Accused.

The Public Prosecutor for the Crown.

N. S.

Beasley, J. 15*th December*, 1927. — C. S. No. 543 of 1926.

Presidency Towns Insolvency Act, Ss. 58 *and* 59—*Official Assignee making forcible entry upon a person's premises and seizing his goods—Liability of the Assignee—C. P. Code, S.* 80—*Officer doing wrongful act outside the scope of his powers—Notice of suit if*

necessary—Wrongful attachment of goods—Damages—Absence of malice—Effect.

The Official Assignee cannot be considered to have acted in his official capacity when he makes a forcible entry upon the premises of a third person and seizes his goods. Seizure by him by threat of force is not permissible.

Where an officer does a wrongful act wholly outside the scope of his powers no previous notice under S. 80, C. P. Code, is necessary before the institution of a suit against him.

Where a person seeks to attach a third person's goods as the property of a person who is a party to the suit the wrongful attachment itself gives rise to the cause of action and no malice need be proved to maintain the claim.

2 Rang. 181 followed.

Nugent Grant and *K. Krishnaswami Aiyangar* for Plaintiff.

K. S. Krishnaswami Aiyangar and *S. Doraisami Aiyar* for Defendants.

N. S.

Kumaraswami Sastri, J.
16th December, 1927. } S. A. No. 1478 of 1925.

Mortgage—Decree by puisne mortgagee subject to first mortgage—Purchase in execution—Right of purchaser to prove that first mortgage partly invalid.

A purchaser in execution of a decree obtained by the 2nd mortgagee subject to the first mortgage is entitled to plead in a subsequent suit by the first mortgagee that the first mortgage executed by the father is not binding on the sons' shares, not being for necessity, and that the property in his hands to the extent of the sons' shares is exempt from liability. There is no estoppel by reason of the fact that the sale was subject to the first mortgage.

31 All. 583 (P. C.) applied.

What is conveyed to the purchaser is the property with all the rights which the judgment-debtors had and not a mere right to sue and the purchaser has the same right to set aside the transaction which the sons (judgment-debtors) had.

L. R. 1 Eq. 337 followed.

B. Sitarama Rao and *S. R. Muthuswami Aiyar* for Appellant.

L. A. Govindaraghava Aiyar for Respondent.

N. S.

Jackson and Srinivasa Aiyangar, JJ.
19th December, 1927. } S. A. No. 205 of 1925.

Decree—Impleading of wrong legal representative—Effect.

Where after the death of a defendant in a suit a wrong person is impleaded as legal representative, the decree obtained in the suit is binding on the proper legal representative even though he was not impleaded in the suit, unless it is found the plaintiff acted fraudulently or collusively in impleading the wrong legal representative.

K. S. Jayarama Aiyar for Appellant.

K. Rajah Aiyar for Respondent.

N. S.

Beasley, J.
4th January, 1928. } C S. No. 553 of 1925.

Pledge—Delivery of pledged articles by the pawnee to the pawnor under an arrangement that the articles should be sold to a certain person—Security of pledgee if lost by this delivery—Delivery of the articles by the pawnor to the specified person—Admission by him that the articles were not sold to him—Right to retain articles as against pawnee for money advanced by him to the pawnor.

Where pledged articles are delivered by the pawnee to the pawnor under an arrangement that the articles should be sold to *A*, the delivery is only for a limited purpose and the pawnee does not lose his security by the delivery. Where *A* with whom the articles are left by the pawnor admits they have not been sold to him, he has no right to retain possession of them, as against the pawnee, for monies advanced by him to the pawnor, however innocent *A* may be.

1895 A. C. 56, followed.

N. Sivaramakrishna Aiyar and *S. Thyagarajan* for Plaintiff.

V. C. Gopalaratnam and *T. Krishnaswami Aiyar* for Defendants.

N. S.

Phillips and *Odgers, JJ.*
5th January, 1928. } S. A. No. 1350 of 1924.

Malabar Law—Karar by Karnavan giving up right of management—Validity.

A karar to be valid as a renunciation of the Karnavanship must be a total and unconditional renunciation. Where a karar was executed for a consideration of Rs. 500, it is not an unconditional renunciation and therefore not valid.

28 M. 182, followed.

A karar permitting the delegation of the Karnavan's right of management is invalid.

12 M. 290, relied on.

P. Govinda Menon for Appellant.

K. P. M. Menon for Respondent.

N. S.

Ramesam and *Devadoss, JJ.*
5th January, 1928. } C. M. A. No. 345 of 1927.

Civil Procedure Code, Order 22, Rule 4—Death of Defendant—Legal representatives already on record—Petition to bring on record legal representative—Necessity of.

Where a defendant is dead and all his legal representatives were already on the record no petition need be filed within three months to bring on record legal representatives. It is enough the fact of the death of the defendant is brought to the notice of the Court.

N R C

3 Pat. 853, not followed.

P. R. Ramakrishnaier for Appellant.

P. S. Narayanasamier for Respondent.

N. S.

Jackson, J.
6th January, 1928. } C. R. P. No. 28 of 1926.

Civil Procedure Code, S. 115—Dismissal of suit for default—Order for restoration on condition of plaintiff paying defendant's costs—Cost tendered by plaintiff and accepted by defendant—Subsequent revision by defendant—Maintainability.

A suit which was dismissed for default was ordered to be restored on condition of plaintiff paying defendant's costs. The costs were tendered by the plaintiff and accepted by defendant. Subsequently the defendant preferred a revision petition against the order restoring the suit.

Held, that the revision was not entertainable as the defendant must be deemed to have acquiesced in the order unless he showed that he received the benefit under compulsion or protest.

G. Lakshmanna for Petitioner.

P. Somasundram for Respondent.

N. S.

Devadoss and
Jackson, JJ.
6th January, 1928. } S A. No. 1340 of 1924.

Landlord and tenant—Notice to quit—Tenant bound to surrender the demised premises on demand—Necessity of notice.

Except in cases of tenancies from year to year or from month to month and tenancies at will no notice to quit is necessary for the determination of the lease unless the terms of the lease specifically provide for it. Where the lessor and the lessee have agreed that the leased property should be delivered over to the landlord on demand no notice to quit is necessary.

K. Kuttikrishna Menon for Appellant.

D. A. Krishna Wariar for Respondent.

N. S.

Devadoss, J.
9th January, 1928. } C. R. P. No. 788 of 1926.

Contract Act, S. 70—River Bund belonging to Government—Repairs by Union Board for the closing of the breach in the bund—Right to recover costs from the Government—Madras Local Boards Act, S. 150.

Owing to heavy rains there were floods in a river belonging to Government and the President of the Union Board to avoid danger to life and property closed up the breach and claimed the cost of repairs from the Government.

Held, that the Government as owner of the river which was used as source of irrigation and as deriving revenue therefrom was bound to keep the bund in proper repair and the Union Board having incurred the expense for the benefit of the Government without intending to do so gratuitously was entitled to the cost of the repairs.

Held, also that under S. 150 of the Madras Local Boards Act, the Union Board was entitled to the claim.

The Government Pleader for Petitioner.

S. Muthiah Mudaliar for Respondent.

N. S.

Devadoss, J. } C. R. P. No. 287 of 1927.
10th January, 1928.

Civil Procedure Code, Order 21, Rule 46—Attachment of kanom as moveable property—Validity.

Ordinarily a kanom does not include a personal undertaking to pay and consequently unless there is express personal undertaking in the deed the attachment of kanom as moveable property is not valid.

B. Sitaram Row for Petitioner.

P. Govinda Menon for Respondent.

N. S.

Kumarasami Sastri and *Devadoss, JJ.* } C. M. S. A. No. 85 of 1927.
11th January, 1928.

Limitation Act, Art. 11—Claim petition not pressed and withdrawn—Order if should be set aside within one year—Insolvency of judgment-debtor within 3 months of the attachment—Effect on the order in the claim petition.

Where a claim petition was not pressed and order was passed allowing it to be withdrawn the order need not be set aside within one year under Art. 11 of the Limitation Act. 41 M. 985 (F. B.), distinguished.

O. 21, R. 63, C. P. Code, applies only to orders in which there is adjudication on the merits or to orders rejecting the claim petition as being too late.

Where the judgment-debtor is adjudicated as insolvent within 3 months of the attachment, the attachment itself ceases to exist and the claim order becomes inoperative.

A. Srirangachari for Appellant.

K. S. Desikan for Respondent.

N. S.

Wallace and Srinivasa Aiyangar, JJ. } S. A. No. 684 of 1925.
12th January, 1928.

Contract Act, S. 74—Penal rate of interest award of compensation—Date from which the award can be made.

Under S. 74 of the Contract Act the Court has jurisdiction to award reasonable compensation in view of the penal rate of interest only

in respect of the portion of the contract which is sought to be enforced. But it has no jurisdiction to do so in so far as the portion of the contract which has already been performed is concerned.

P. Somasundram for Appellant.

G. Lakshmanna for Respondent.

N. S.

Waller, J.
16th January, 1928.
C. S. No. 705 of 1926.

Contract Act, S. 23—Contract for remuneration in lieu of invoking the blessings of God—Legality.

A contract by which the defendant agreed to pay a sum of money to the plaintiff by way of remuneration for the plaintiff performing pujah to God and invoking His blessings for the successful issue of a suit that had been instituted by the defendant is not supported by lawful consideration and amounts to bringing extraneous influence to bear upon the Court and thus affect the due administration of justice.

49 All. 785, distinguished.

R. Swaminatha Aiyar for Plaintiff.

K. Narasimha Aiyar for Defendant.

N. S.

Jackson and *Srinivasa Aiyangar, JJ.*
16th January, 1928.
S. A. No. 20 of 1925.

Jurisdiction—Civil Court—Suit to set aside sale of holding under Estates Lands Act by a mortgagee.

A suit in a civil Court by a mortgagee of a holding to set aside a sale of the holding held under the Estates Lands Act on the ground of absence of proclamation of sale and notice to the owner of the holding as well as fraud and other irregularities is maintainable.

35 Mad. 890 (F.B.), followed.

P. V. Ranga Ram for Appellant.

Ch. Raghava Rao for Respondent.

N. S.

Kumarasami Sastri and *Reilly, JJ.*
16th January, 1928.
A. S. No. 263 of 1923.

Civil Procedure Code, Order 21, Rule 2—Order on claim petition—Suit to set aside order—Possession delivered to auction-purchaser in execution of decree before institution of suit to set aside claim petition order—Suit if should include prayer for possession. C. P. Code, S. 11—Court of competent jurisdiction.

Where an order was passed on a claim petition dismissing it and before the claimant filed a suit to set aside the claim order the properties had been sold in execution and taken possession of by the purchaser the suit by the claimant to set aside the claim order without a prayer

for possession is maintainable, and a subsequent suit for recovery of possession is not barred by Order 2, Rule 2, C. P. Code, because the cause of action for such a suit is different from the cause of action for the suit under Order 21, Rule 63. Where the suit to set aside the claim order was filed in a Munsif's Court and the Court negatived the contention of the defendant that the claimant's purchase from the judgment-debtor was in fraud of creditors and in a subsequent suit in the Sub-Court for recovery of possession from the purchaser the purchaser raised the contention that the plaintiff's purchase was in fraud of creditors,

Held, that the decision in the prior suit on the point was not *res judicata* as the decision in the prior suit was by a Court not competent to try the subsequent suit.

V. Ramadoss for Appellant.

S. Varadachari for Respondent.

N. S.

Kumarasami Sastri and *Reilly, JJ.* *16th January*, 1928. — A. S. No. 360 of 1923.

Registration Act, S. 40—Authority to adopt in favour of minor wife—Presentation for registration by the widow's father—Legality.

Where a document conferring an authority to adopt had been executed by a member of a joint Hindu family in favour of his minor wife and after his death the father of the minor widow presented it for registration.

Held, that he being the *de facto* guardian of the widow, was not entitled to present the document for registration and that the only persons who could present the document for presentation would be the legal guardians of the minor, namely the co-parceners of the deceased husband.

M. Patanjali Sastri for Appellant.

K. Krishnamachari for Respondent.

N. S.

Jackson, J. *17th January*, 1928. — C. R. P. No. 130 of 1927.

Limitation Act, Art. 182—Step-in-aid of execution—Batta memorandum to issue process to judgment-debtor.

The presentation of a batta memorandum to issue process to the judgment-debtor is a step-in-aid of execution.

28 Mad. 399, followed.

K. S. Venkatarama Aiyar for Petitioner.

K. S. Sankara Aiyar for Respondent.

N. S.

Jackson, J. *17th January*, 1928. — C. R. P. No. 775 of 1926.

Civil Procedure Code, S. 73 and Order 21, Rule 10—Assets realised by a Court—Application for rateable distribution

—*Decree of applicant not transferred to the Court before the filing of the application—Right to rateable distribution.*

The properties belonging to a judgment-debtor were sold in execution of a decree in the Sub-Court and the sale proceeds deposited in Court. A day prior to this deposit another decree-holder against the judgment-debtor on the file of the Munsif's Court applied in that Court for transmission of his decree to the Sub-Court, but the decree copy reached the Sub-Court one day later than the date on which the sale proceeds were deposited in that Court. Meantime the decree-holder in the Munsif's Court had applied in the Sub-Court for rateable distribution.

Held that he was not entitled to rateable distribution as no execution application had been filed in the Court which passed the decree or in the transferee Court after the decree was received by it by way of transfer.

M. Krishna Bharathi for Petitioner.

T. S. Anantharamier for Respondent.

N. S.

Phillips, Ramesam and *Madhavan Nair, JJ.* *17th January*, 1928. — I. P. No. 201 of 1919.

Insolvency—Adjudication of Hindu father as insolvent—Subsequent institution of partition suit by sons—Power of Official Assignee to sell the family properties to discharge the father's debts.

Held by Ramesam and Devadoss, JJ. (Phillips, J., dissenting) that the power of the Official Assignee to sell the joint family properties inclusive of the sons' shares in a case where the father has been adjudicated as insolvent cannot be exercised after the institution of a suit for partition of the family properties impleading the Official Assignee as a defendant.

K. S. Krishnasami Aiyangar for Official Assignee.

The Advocate-General for Insolvent's sons.

N. S.

Ramesam and Devadoss, JJ. *18th January*, 1928. — C. M. A. No. 340 of 1927.

Jurisdiction—Suit in foreign Court—Plaintiff in the suit a defendant in the suit in the Subordinate Court—Power of Subordinate Court to issue injunction restraining him from prosecuting the suit in the foreign Court.

A Subordinate Court has no jurisdiction to pass an order of injunction restraining a party before it from prosecuting a suit filed by him in a foreign Court. Even if the Subordinate Court had such power, it should not be granted unless it was clearly proved that the action of the foreign Court was oppressive or vexatious or the prosecution of it would defeat the ends of justice.

(1919) 1 K.B. 410, relied upon.

V. Ramasamy Aiyar for Appellant.

M. Patanjali Sastriar and N. R. Govindachary for Respondent.

N. S.

Wallace and
Srinivasa Ayyangar, JJ. } S. A. No. 619 of 1925.
18th January, 1928.

Hindu Law—Joint family—Alienation by co-parcener—Suit to set aside by another co-parcener—Right to impeach consideration.

A co-parcener who disputes the validity of alienation by another co-parcener in a suit brought by him to set aside the alienation is entitled to set up the plea that the alienation is not supported by consideration.

B. Somayya for Appellant.

C. Rama Rao for Respondent.

N. S.

Coutts Trotter, C.J. and
Madhavan Nair, J. } L. P. A. No. 11 of 1925.
18th January, 1928.

Mortgage—Prior and subsequent—Puisne mortgagee not impleaded in suit by prior mortgagee—Surplus sale proceeds in prior mortgagee's suit—Right of puisne mortgagee to proceed against.

In execution of a decree obtained in a suit by a prior mortgagee not impleading the puisne mortgagee as a party, the mortgaged property was sold and purchased by a stranger with the knowledge of the subsequent encumbrance. A money decree-holder against the mortgagor drew the surplus sale proceeds which were in Court deposit. The puisne mortgagee instituted a suit upon his mortgage and claimed that the surplus sale proceeds represented the mortgaged property sold, and therefore the money decree-holder should refund the amount drawn by him.

Held, that the puisne mortgagee even though he was not impleaded as a party in the prior mortgagee's suit was entitled to proceed against the surplus sale proceeds in the Court instead of proceeding against the property in the hands of the auction-purchaser.

18 Bom. 684 & 43 A. 268, followed.

41 I.A. 45 : 41 Cal. 654 : 26 M.L.J. 243 (P.C.) & 40 M. 77 : 30 M. L. J. 347, referred to.

Held also, that the appeal preferred by auction-purchaser to the High Court against the decree of the first Appellate Court, though the real aggrieved party was the puisne mortgagee, was maintainable inasmuch as the puisne mortgagee was also made a party in the appeal.

K. V. Krishnaswami Ayyar and *V. Rajagopala Ayyar* for Appellant.

S. Varadachariar and *T. Krishnaswami Ayyangar* for Respondent.

N. S.

Beasley, J. } C. S. No. 420 of 1926.
18th January, 1928.

Defamation—Statement by wife of cruel treatment by husband—Statement that husband infected wife with gonorrhoea—Proof of special damage.

A libellous statement by the wife that her husband cruelly ill-treated her is not actionable without proof of special damage. But a

libellous statement that her husband infected her with gonorrhoea is actionable without proof of special damage.

The plaintiff in person.

G. Krishnaswami Ayyar for defendant.

N. S.

Ramesam and Devadoss, JJ. *20th January, 1928.* — C. M. S. A. No. 8 of 1926.

Constructive Res-Judicata—*Applicability to execution proceedings.*

The doctrine of constructive *res judicata* applies to execution proceedings. Where a judgment-debtor after receiving notice of the application for transmission of the decree for execution to another court does not raise the plea of limitation and the decree is transmitted for execution, the judgment debtor is debarred from raising the plea at a later stage in the executive court.

47 Mad. 641 : 47 M.L.J. 4 & 1926 M. W. N. 336, referred to.

R. Krishnaswami Ayyangar for Appellant.

K. S. Ramabadhra Ayyar for Respondent.

N. S.

Jackson, J. *20th January, 1928.* — C. R. P. No. 1041 of 1927.

Civil Procedure Code, Order VI, Rule 17—Amendment of plaint—Suit valued at Rs. 200—Finding by Court that value was Rs. 4 000 and consequently suit beyond the jurisdiction of Court—Application for amendment so as to bring suit within jurisdiction.

A suit was instituted in the Munsif'sCourt to recover possession of a house and other properties. The house was valued at Rs. 200. On objection by the defendant, the Court found the value of the house to be Rs. 4,000 and therefore the suit was beyond the jurisdiction of the Court. The plaintiff then put in an application to amend the plaint by deleting the relief as to the house. The District Munsif held that, though he had jurisdiction to allow the amendment, in the circumstances of the case amendment should not be allowed. On appeal, the lower appellate Court held that, once jurisdiction was found to exist, the Court was bound to allow the amendment.

Held (on Revision), that the Court had no jurisdiction to pass an order of amendment after the finding that it had no jurisdiction to entertain he plaint.

T. M. Krishnaswami Ayyar for Petitioner.

K. P. Mahadeva Ayyar for Respondent.

N. S.

Jackson, J. *20th January, 1928.* — C. R. P. Nos. 1497 to 1499 of 1927.

Madras Estates Land Act—Summary suits under—Dismissal for default—Application for restoration.

The limitation for an application to restore a summary suit under the Estates Land Act which was dismissed for default is one month, the period fixed by Limitation Act.

V. Suryanarayana for Petitioner.

P. Somasundram for Respondent.

N. S.

Ramesam and Devadoss, JJ.
20th January, 1928.
C. M. S. A. No. 153 of 1927.

Provincial Insolvency Act, S. 17—Creditor's petition to adjudicate debtor as insolvent—Subsequent death of debtor before adjudication—Effect.

A petition filed by a creditor to adjudicate the debtor as an insolvent can after the death of the debtor before the adjudication be continued against the legal representative of the debtor. The fact that the debtor is not alive on the date of the order of adjudication is immaterial.

A fraudulent transfer by the debtor in favour of his sister's husband amounts to an act of bankruptcy.

53 M. L. J. 890, followed.

K. V. Krishnaswami Ayyar and *T. S. Vydhniadha Ayyar* for Appellant.

B. Sitarama Rao and *S. R. Muthuswami Ayyar* for Respondent.

N. S.

Phillips and Odgers, JJ.
23rd January, 1928.
A. S. No. 162 of 1924.

Civil Procedure Code, S. 64—Contract for sale by judgment-debtor—Subsequent attachment of properties—Subsequent sale in prusuance of the prior contract of sale—Validity—Attachment if fastens on the sale price—C. P. Code., S. 47 and Order 21, R. 63—Simple money decree—Transferee of immoveable property from judgment-debtor—If representative of judgment-debtor— Appeal against adverse order on claim petition by him—Maintainability.

Where an attachment of immoveable property is effected subsequent to a contract for the sale of the property by the judgment-debtor, S. 64, C. P. Code, does not avoid a sale thereafter in pursuance of the prior contract for sale.

5 L. W. 234, followed.

Where there is an attachment of immoveable property and a subsequent valid sale of the property in pursuance of the prior contract of sale, the attachment does not *ipso facto* fasten itself under S. 64, C.P. Code, on the sale price payable to the vendor (judgment-debtor) solely by reason of the price being the substitute for the land attached.

Where there is a simple money decree having no reference to any specific immoveable property of the judgment-debtor, the transferee of the immoveable property from the judgment-debtor is not a representative of the judgment-debtor under S. 47, C. P. Code, and, therefore, the transferee cannot prefer any appeal against an adverse order on a claim petition filed by him to release the property from attachment. His only remedy is a suit under Order 21, R. 63, C. P. Code.

T. M. Krishnaswami Ayyar and *N. Sivaramakrishna Ayyar* for Appellant.

K. V. Sesha Ayyangar and *K. R. Narayana Ayyar* for Respondent.

N. S.

Wallace and Srinivasa Ayyangar, JJ.
24th January, 1928.
S. A. No. 579 of 1925.

Damages—Principal and Agent—Wrongful sale of goods entrusted to agent for disposal—Measure of damages.

Where a principal brought a suit for damages against the agent on the ground that the agent who was entrusted with the goods for sale sold them without taking instructions from the principal and thereby converted them to his own use.

Held, that the agent was not liable to pay for the goods at the highest market rate prevailing before the institution of the suit which would be the proper measure of damages, if the goods were not ordinary merchandise, but other things like pictures, &c., but the proper measure of damages, the goods being jaggery, must be fixed on the basis of the market rate prevailing a week after the date of knowledge of sale by the plaintiff.

G. Lakshmanna for Appellant.

P. Somasundaram for Respondent.

N. S.

Ramesam and Reilly, JJ.
27th January, 1928.
A. S. No. 129 of 1923.

Hindu Law—Joint family—Self acquisition—Property acquired on dharkast*—Absence of nucleus—Burden of proof—Words "acquired by me"—Meaning of.*

Where there is no ancestral nucleus, the onus of proving that properties standing in the name of a member of a joint Hindu family are not his self acquired properties lies on the party asserting that it is not self acquired, however difficult it may be to prove the same.

9 M. 477, dist.

Where a Hindu family consisting of a great grandfather, grandfather, father and sons were all living together and attending to the cultivation of lands and the family affairs, and lands were acquired by the great grandfather on *dharkast*.

Held, that these lands were the self acquired properties of the great gradfather and did not become joint family properties. The words "acquired by me" in a document executed by a senior member of a joint Hindu family mean only that the particular properties were acquired during the period of his management and not necessarily that these properties were his self acquisitions.

S. Varadachariar and *C. Unikanda Menon* for Appellant.

T. M. Krishnaswami Ayyar and *N. Sivaramakrishna Ayyar* for Respondent.

N. S.

Wallace and Srinivasa Ayyangar, JJ.
25th January, 1928. } L. P. A. No. 227 of 1925.

Madras Estates Land Act, S. 151—Lease by the ryot for building purposes.

The mere fact that the ryot has executed leases of the land in his holding for building purposes is no ground to eject the ryot under S 151. But, if the lessee has erected a building on the holding, it amounts to a material impairing of the holding for agricultural purposes within S. 151.

P. V. Rangaram for Appellant.

A. Krishnaswami Ayyar for Respondent.

N. S.

Wallace and Srinivasa Aiyangar, JJ.
27th January, 1928. } S. A. Nos. 445 and 446 of 1925.

Minor—Guardian— Contract by, to sell minor's immovable property—Specific performance.

A contract entered into by the guardian of a Hindu minor cannot be specifically enforced against the minor.

L. P. A 67 of 1924, followed.

S. Varadachariar and *V. Krishnamohan* for Appellant.

C. S. Venkatachari and *A. Venkatachalam* for Respondent.

N. S.

Ramesam and Devadoss, JJ.
1st February, 1928. } C. M. S. A. No. 37 of 1927.

Limitation Act, S. 15—Four judgment-debtors—Stay of execution in favour of one—If saves limitation as against the others—Provincial Insolvency Act—Order of adjudication—If operates as a stay of execution.

The period of stay of execution against one judgment-debtor does not save limitation in respect of execution as against the other debtors.

13 Law Weekly 59, not followed.

Quaere: Whether the insolvency of the judgment-debtor operates as stay of execution so as to enable the decree-holder to exclude the period under S. 15 of the Limitation Act.

The Advocate-General for Appellant.

B. Sitarama Rao and *N. R. Sesha Ayyar* for Respondent.

N. S.

Wallace, J.
2nd February, 1928. } Crl. A. No. 405 of 1927.

Madras Local Boards Act, Ss. 24 and 223—Power of President to authorise anybody to prefer complaint.

S. 223 of the Madras Local Boards Act is not qualified by S. 24. The President has power to authorise anybody to prefer a complaint, but the power must be expressed and filed along with the complaint.

S. Parthasarathy and *V. K. Thiruvenkatachari* for Accused.

N R C

The Public Prosecutor for the Crown.

P. Govinda Menon, Amicus Curiae.

N. S.

The Chief Justice, Beasley and Madhavan Nair, JJ. 2nd *February*, 1928. } R. C. No. 5 of 1927.

Indian Income-tax Act, S. 4 (3) (1)—Sums entered in the accounts in the name of charity—Whether property held under trust—Income from it—Whether an allowable deduction.

Where a fund was set apart for the purposes of a particular trust and so entered in the accounts of the assessee and treated as trust fund for several years by the income-tax authorities, though there was no registered trust deed.

Held, that it was not property held under trust or other legal obligation for religious or charitable purposes and the income from it is not exempt from assessment.

V. Rajagopala Aiyar for Assessee.

M. Patanjali Sastri for Commissioner of Income-tax.

N. S.

Devadoss, J. 6th *February*, 1928. } C. R. P. No. 459 of 1926.

Civil Procedure Code, S. 20 (c)—Cause of action—Execution of hundis at one place and sending them to another place—Suit on hundi at the latter place.

Where the contract between the parties was that the defendants were to execute the hundis and send them to Palghat where the plaintiff resided, the delivery of the hundi at Palghat is a part of the cause of action and consequently a suit on the hundi at Palghat is maintainable.

1 M. H. C. R. 202, followed.

B. Sitarama Rao for Petitioner.

K. S. Desikan for Respondent.

N. S.

Devadoss, J. 6th *February*, 1928. } C. R. P. No. 215 of 1927.

Provincial Insolvency Act, S. 53—Failure of creditors to prove debts—Sufficient assets in the hands of the Receiver to pay the proved debts—Application under the Section—Maintainability

Where certain creditors of an insolvent whose estate was administered in a summary manner failed to prove their debts within the time allowed and their petition to extend the time for proving their debts was rejected and the Official Receiver had sufficient assets at his disposal for payment in full of debts which had been proved :

Held, that the Official Receiver could not maintain proceedings under S. 53 of the Provincial Insolvency Act for setting aside an alienation made by the insolvent as there were no creditors for whose sake it could be or had to be done.

B. Satyanarayana, for Petitioner.

V. Govindarajachari for Respondent.

N. S.

Phillips and Odgers, JJ.
6th February, 1928. } A. S. No. 90 of 1924.

Hindu Law—Will giving authority to adopt to widow—Suit for declaration that the will is a fabrication—Finding that the will is genuine—Declaration that will invalid on the ground of its not being registered—If can be given.

Where a Hindu reversioner sued for a declaration that a certain unregistered will alleged to have been executed by the last male owner giving his widow authority to adopt was a fabrication and it was found that the will was genuine but that the testator was a minor when he executed it :

Held, that the plaintiff was not entitled to a declaration that the will was invalid even if genuine on the ground that it contained an authority to adopt and was therefore compulsorily registrable.

52 I.A. 305 : 48 Mad. 614 : 49 M. L. J. 247 (P. C.), referred to.

G. Lakshmanna and *P. Satyanarayanarao* for Appellant.

A. Krishnaswami Ayyar and *V. Govindarajachari* for Respondents.

N. S.

Ramesam and Jackson, JJ.
7th February, 1928. } C. M. S. A. Nos. 96 and 97 of 1925.

Civil Procedure Code, O. 40, R. 1—Order appointing receiver in execution—Second appeal—Maintainability.

An order appointing or refusing to appoint a receiver in execution of a decree is one within the scope of Order 40, R. 1, C. P. Code, and consequently no second appeal lies from such an order.

14 C. L. J. 489, referred to.

B. Sitarama Rao for Petitioner.

K. Kuttikrishna Menon for Respondent.

N. S.

Kumaraswami Sastri and Devadoss, JJ.
8th February, 1928. } C. M. S. A. No. 6 of 1927.

Minor—Pronote executed by guardian—Decree on—Minor represented by executant as guardian ad litem*—Validity of decree—Void or voidable—Plea of—If can be raised in execution.*

The following questions were referred to a Full Bench :

(1) Whether in a suit upon a promissory note against a minor a decree obtained against him represented by the executant as the guardian *ad litem* is invalid or not.

(2) Whether a decree passed against a minor who is represented by a guardian whose interests are adverse to that of the minor is void or voidable.

(3) Whether in execution of such a decree the plea of the invalidity of the decree can be taken.

G. Lakshmanna for Appellant.

V. Viyanna for Respondent.

N. S.

The Chief Justice, Beasley and Madhavan Nair, JJ.
9th February, 1928.

C. R. P. No. 1216 of 1925.

Civil Procedure Code, O. 22, R. 3—Suit on mortgage—Preliminary decree—Death of plaintiff subsequent to—Abatement.

Where a decree-holder in a mortgage suit dies subsequent to the passing of the preliminary decree, the suit does not abate even though the legal representatives are not brought on record within the period allowed by the law of limitation.

45 M. 872=42 M.L.J. 301, overruled.

S. Varadachariar and *B. V. Visvanatha Iyer* for *N. Swaminathan* for Petitioner.

C. S. Venkatachariar for *P. N. Appuswami* for Respondent.

N. S.

Wallace and Srinivasa Aiyangar, JJ. } S. A. No. 1462 of 1924.
30th January, 1928.

Malabar Law—Tiyyas of Calicut—Law applicable to—Right of compulsory partition if exists—Custom—If Hindu Law applies.

Some of the members of a Makkathayam Tiyya family of Calicut filed a suit for a declaration that the attachment and sale of the share of another member of the family in the family property was illegal as there was no right of compulsory partition and the question arose whether among the Tiyyas of Calicut the right of compulsory partition exists.

The District Judge of South Malabar called for a finding from the Munsif as to whether the custom existed and the Munsif returned a finding on the facts that there was this custom of compulsory partition. The District Judge held on the evidence the right of compulsory partition did not exist and no custom has been made out and following the ruling in 17 Mad. 184 held that the plaintiffs are entitled to a decree.

In second appeal their Lordships held following 17 Mad. 184 that no custom as to the right of compulsory partition has been made out and accepted the finding of the lower court.

Per Wallace, J.—In the absence of any special custom the Hindu Law will be applicable to the parties and the principles in 53 M. L. J. 368 will therefore be applicable.

Per Srinivasa Aiyangar, J.—As the decision in 17 Mad. 184 is still good law the decision in 53 M. L. J. 368 requires reconsideration.

Dr. S. Swaminathan for Appellant.

K. P. Ramakrishna Aiyar for Respondent.

N. S.

Phillips and Odgers, JJ. } Appeal No. 170 of 1925.
8th February, 1928.

T. P. Amendment Act (XXVII of 1926)—If retrospective.

T. P. Amendment Act (XXVII of 1926) does not govern a mortgage executed before the Act came into force.

Cases on the subject discussed.

G. Krishnaswami Aiyar and *A. Parameswara Aiyar* for Appellant.

S. Varadachariar and *N. R. Govindachari* for Respondent.

N. S.

Phillips and Odgers, JJ. } A. S. Nos. 115 and 116 of 1924.
13th February, 1928.

Hindu Law—Right of maintenance of wife against her husband and his family—Charge on family property—Rate of maintenance.

Where a Hindu wife claimed separate maintenance against her husband and against the property of the joint family of which he is a member, on account of gross cruelty and ill-treatment in her husband's family, and also a charge against the joint family property and she claimed at the rate of Rs. 30 per month for maintenance when the family income

N. R. C.

was about Rs. 2,500 per month and there were only three sharers in the joint family,

Held, (1) that the wife was entitled to separate maintenance, gross cruelty in her husband's family being proved,

(2) that she was also entitled to a charge for her maintenance on her husband's share in the joint family property as the claim for maintenance is not merely a personal claim but is also a claim against the property in the joint family.

9 B. H. C. 283, 21 L. W. 461, and 39 M. L. T. 212, followed.

and (3) that as the defendant failed to produce the account or to prove the family income and as there was evidence that the family income was not less than Rs. 2,500 per month a rate of Rs. 30 per month was a proper one considering the status and position of the family.

B. Sitarama Rao and *P.S. Narayanaswami Aiyar* for Appellant.

T. M. Krishnaswami Aiyar and *K. P. Ramakrishna Aiyar* for Respondent.

N. S.

Wallace, J.
14th February, 1928. } C. R. P. No. 121 of 1928.

Civil Procedure Code, S. 115—*Election proceedings—Validity of a vote—Power of High Court to decide in revision.*

In an election petition questioning the validity of an election on the ground that the returning officer improperly rejected three votes as invalid, the Subordinate Judge held that the votes were not invalid but ought to have been counted in favour of the defeated candidate and consequently declared him to be duly elected.

Held, (on revision) that the "High Court will not decide in revision whether a vote was or was not valid but only whether the lower court exercised its jurisdiction properly."

49 M. L. J. 381, followed.

A. Sundaram for Petitioner.

S. Jagadisa Aiyar for Respondent.

N. S.

Ramesam and Jackson, JJ.
14th February, 1928. } C. R. P. No. 535 of 1926.

Limitation Act, Art. 96—*Claim for refund of surcharges wrongly collected by Railway Company.*

The period of limitation for the recovery of amounts said to have been wrongly collected by Railway Company as surcharge in respect of consignment of cotton seeds is 3 years from the date of the respective payments.

Art. 96 of the Limitation Act contemplates cases of mistake of law, but the mistake must be a mistake not of a general law but of a particular law applicable to a particular case.

R. Srinivasa Aiyangar for Petitioner.

The Advocate-General for Government.

S. S. Ramachandra Aiyar for Railway Company.

N. S.

Wallace, J.
15th February, 1928.
C. R. P. No. 185 of 1927.

Malabar Law—Suit to recover Paravasi—*Nature of suit—If cognizable by the Small Cause Court.*

Under Malabar Law the term *Paravasi* means an excess or deficit in measurement of paddy. Suit to recover *paravasi* is one to enforce a charge on the immoveable property and is not cognizable by the Small Cause Court.

K. P. Ramakrishna Aiyar and *K. C. Cheria Kunhunni Raja* for Petitioner.

M. Eachara Menon for Respondent.

N. S.

Thiruvenkatachariar, J.
15th February, 1928.
C. R. P. No. 282 of 1927.

Civil Procedure Code, S. 115—*Order declaring defendant* ex parte—*Application to set aside the order—Order dismissing—Revision—Interference.*

The High Court will not interfere in revision against an order dismissing an application to set aside an order declaring a defendant *ex parte*, as the petitioner might have applied under O. 9, R. 13 to set aside the *ex parte* decree or preferred an appeal against the *ex parte* decree.

T. L. Venkatrama Aiyar for Petitioner.

A. C. Sampath Aiyangar for Respondent.

N. S.

Wallace, J.
15th February, 1928.
Crl. A. No. 650 of 1927.

Criminal Procedure Code, Ss. 181 *and 183—Entrustment of goods to carrier at Mysore—Goods to be delivered at Mangalore—Misappropriation of part of the goods—Prosecution at Mangalore—Jurisdiction of Court.*

A cart-driver was entrusted at Mysore with goods to be delivered at Mangalore. Part of the goods was misappropriated and the rest only was delivered at Mangalore. The evidence did not show at what place the misappropriation took place. He was charged for criminal breach of trust at Mangalore.

Held, that S. 183 of the Crl. P. Code was not applicable as there was no proof that the offence took place in British India, but S. 181 (2) applied as the offence could be deemed to have been committed at Mangalore where the breach of trust to deliver took place.

The Public Prosecutor for the Crown.

D. A. Krishna Warriar for Accused.

N. S.

Ramesam and Jackson, JJ. *16th February*, 1928. — C. M. A. No. 88 of 1925.

Assignment of decree—Plea that assignment was benami *on behalf of judgment-debtor—Onus of proof.*

The onus of proving that assignment of the decree was *benami* on behalf of one of the judgment-debtors is on the judgment-debtor.

B. Somayya for Appellant.

A. Krishnaswami Aiyar for Respondent.

N. S.

Ramesam and Devadoss, JJ. *16th February*, 1928. — C. M. S. A. No. 134 of 1926.

Civil Procedure Code, O. 21, R. 52—Raising of attachment—Pending execution application—Necessity of.

If an attachment is to be raised under O. 21, R. 52, there must be a proper and pending execution application so as to attract the operation of the rule.

Where an execution application is returned as not in accordance with law and for some particulars to be given, there cannot be said to be any execution application pending in the Court.

A. Swaminatha Aiyar for Appellant.

M. S. Venkatarama Aiyar for Respondent.

N. S.

Ramesam and Devadoss, JJ. *17th February*, 1928. — C. M. A. No. 370 of 1927.

*Civil Procedure Code, Ss. 37 and 150—Transfer of territorial jurisdiction by Government notification subsequent to institution of suit—Jurisdiction of Court which passed the decree to execute the decree—*Res judicata*—Failure to object to the jurisdiction of the transferee Court to execute the decree—If precludes the judgment-debtor from raising the objection later—C. P. Code, S. 21—Applicability to execution proceedings.*

A suit was instituted in the Negapatam Sub-Court and, subsequent to the institution, the territorial jurisdiction was transferred by notification of Government to the Tanjore Sub Court. The suit was tried by the Negapatam Sub-Court and a decree was passed. An execution application was filed in the Tanjore Sub-Court and, the judment-debtors being *ex parte*, an order for sale was passed. Before the date fixed for sale, an alienee from the judgment-debtor put in an objection to the jurisdiction of the Tanjore Sub-Court to execute the decree.

Held, (1) that the only Court which had jurisdiction to execute the decree was the Negapatam Sub-Court which passed the decree, even though it had lost territorial jurisdiction at the time when the execution application was filed ; and the Tanjore Sub-Court had no jurisdiction to execute the decree without the decree being transferred to it for execution.

Case-law reviewed.

(2) That the prior order settling the sale proclamation would not amount to *res judicata*, as the order was not passed by a competent Court, the Tanjore Sub-Court not being competent to entertain the execution application, and

(3) that S. 21, C. P. Code, was not applicable to execution proceedings and consequently the plea of want of jurisdiction could be taken at a late stage.

K. S. Jayarama Aiyar for Appellant.

K. Bhasyam Aiyangar for Respondent.

N. S.

Kumaraswami Sastri and Devadoss, JJ.
20th February, 1928.
S. A. No. 720 of 1925.

Contribution—Joint decree-holders—Execution application by one on behalf of all—Payment of amount to applicant out of Court—Arrangement that the amount was to be adjusted towards the share of the applicant—Right of the other decree-holders to contribution.

A joint decree was passed on a mortgage in favour of two persons. One of them put in an execution application on behalf of both. The judgment-debtor paid a certain amount to the applicant out of Court and the execution petition was allowed to be dismissed. The other decree-holder sued this decree-holder to recover his share of the amount received by him from the judgment-debtor. The defendant contested the claim on two grounds, *viz.*, (1) that the amount, having been collected out of Court, could not be said to have been recovered in execution so as to entitle the plaintiff to contribution, and (2) that the amount was paid as the share due to the defendant exclusively in respect of the joint decree.

Held, that the amount, though paid out of Court, was paid by virtue of, and during the pendency of, the execution application taken on behalf of both the decree-holders, and consequently the plaintiff was entitled to contribution, and the defendant, even assuming there was an arrangement that the amount should be adjusted towards his share of the decree amount, was not entitled to appropriate the amount exclusively for himself.

Held also, that the defendant when he received the amount, could not be said to be a trustee for the plaintiff and consequently the plaintiff was not entitled to interest, in the absence of a demand prior to the date of the suit.

M. Patanjali Sastri for Appellant.

R. Kesava Aiyangar for Respondent.

N. S.

Kumaraswami Sastri and Reilly, JJ.
20th February, 1928.
S. A. No. 1752 of 1925.

Hindu Law—Joint family—Alienation by manager—Portion of the consideration for necessary purposes—Decree—Charge on the shares of persons other than the alienor.

In the case of an alienation by the manager of a joint Hindu family where a portion of the consideration only is for necessary and binding purposes,

(i) if the portion is grossly inadequate having regard to the share of the alienor himself, the entire sale is really a gift in the guise of a sale and consequently will not be valid even to the extent of the alienor's share.

27 M. 162, followed.

(ii) if the value of the alienor's share could be sufficient to cover the binding portion of the consideration, the alienee will be entitled to have the sale enforced in respect of the alienor's share but he will not be entitled to a charge over the other coparceners' shares for their proportionate share of the binding consideration.

23 M. 89, referred to.

(iii) if the binding portion of the consideration is more than the value of the alienor's share, the alienee will be entitled to get the alienor's share in the properties and also to have a charge over the other coparceners' shares in respect of the portion of the consideration not covered by the alienor's share.

37 M. 438, dissented from.

S. Varadachariar and *P. N. Appuswami Aiyar* for Appellant.

T. L. Venkatrama Aiyar for Respondent.

N. S.

Waller, J.
21st February, 1928. } C. M. S. A. Nos. 49 and 62 of 1925.

Limitation Act, S. 18—Execution sale—Application to set aside for fraud—Fraud of decree-holder only—Absence of fraud on the part of the auction purchaser—C. P. Code, O. 21, R. 90.

An execution sale can be set aside for fraud on the part of the decree-holder in spite of the *bona fides* on the part of the auction purchaser. An application to set aside an execution sale filed beyond thirty days is not barred by limitation if fraud on the part of the decree-holder is proved, even though there is no fraud on the part of the auction purchaser

K. Bhasyam Aiyangar and *A. V. Visvanatha Sastri* for Appellant.

K. S. Krishnaswami Aiyangar and *K. S. Champakesa Aiyangar* for Respondent.

N. S.

Wallace, J.
21st February, 1928. } C. R. P. No. 633 of 1927.

Evidence Act, S. 92—Pro-note executed by two persons—Recovery of the amount from one of them—Suit for contribution against the other—Plea that defendant was only a surety—Admissibility of oral evidence as to.

The amount due on a pro-note executed by two persons was collected from one of them and the latter sued the other executant of the pro-note for contribution. The defendant pleaded that he was only a

surety. The plaintiff contended that oral evidence was not admissible to prove that the defendant was only a surety as he had joined in the execution of the note as co-executant.

Held, that the defendant would be precluded from proving by oral evidence that he was a surety *only* in a suit upon the note by the payee, but in a suit for contribution by the other executant he can prove by oral evidence that he was only a surety as it would not be contradicting the terms of the note, the note being silent as to the relations of the co-executants *inter se*. The words "parties to the instrument" in S. 92 of the Evidence Act mean parties arranged on opposite sides and not parties on the same side.

10 All. 421, referred to.

K. P. Ramakrishna Aiyar for Petitioner.

N. Swaminathan for Respondent.

N. S.

Wallace, J.
23rd February, 1928. } Crl. R. C. Nos. 385, etc., of 1927.

Madras Local Boards Act, S. 221—License not taken out—Prosecution not launched—Right to recover license fees.

A Taluk Board has no power to recover license fees from any person to whom a license has not been granted. The proper remedy was to launch a prosecution for failure to take out the license and a Taluk Board by their failure to launch a prosecution cannot be said to have impliedly granted a license.

Crl. Rev. Case 784 of 1927, followed.

N. R. Govindachari for Petitioner.

The Public Prosecutor for the Crown.

N. S.

Phillips and *Odgers, JJ.*
27th February, 1928. } A. S. No. 108 of 1924.

Mortgage—Suit on prior mortgage—Puisne mortgagee not impleaded—Decree and execution sale—Subsequent suit by the puisne mortgagee on his mortgage—Right of auction purchaser in the first mortgagee's suit to hold up the prior mortgage as a shield and claim priority.

A suit was instituted on a prior mortgage without impleading the puisne mortgagee as a party and the properties were sold in auction in execution of the decree obtained in the suit. Subsequently the puisne mortgagee instituted a suit on his mortgage impleading the court auction purchaser in the prior mortgagee's suit as a party. The auction purchaser claimed to set up the prior mortgagee's rights as a shield.

Held, that the auction purchaser was entitled to hold up the prior mortgage as a shield and claim priority in respect thereof.

41 M. L. J. 399, followed.

Held also, that no question of limitation arose, as the prior mortgage was only used as a shield.

52 M. L. J. 532, doubted.

B. Somayya for Appellant.

T. V. Muthukrishna Aiyar for Respondent.

N. S.

Jackson, J.
28th February, 1928.
C. R. P. No. 303 of 1926.

Village Court's Act, S. 73—Illegal decision of the Panchayat Court—Reversal of—Validity.

A District Munsif reversed the decision of the Village Court on the ground that the decision was opposed to law although it was not unjust.

Held, that the District Munsif was entitled to do so and the High Court will not interfere in revision.

K. Kuttikrishna Menon for Petitioner.

K. P. Ramakrishna Aiyar for Respondent.

N. S.

Kumaraswami Sastri and *Reilly, JJ.*
28th February, 1928.
S. A. Nos. 1075 and 1076 of 1925.

Limitation Act, Arts. 120, 134, 142 *and* 144*—Trust properties—Alienation by the members of mutawalli's family—Suit by worshippers to recover possession of—Limitation.*

The period of limitation for a suit by the worshippers of a mosque to recover possession of the properties belonging to the mosque which had been improperly alienated by the members of the mutawalli family is 12 years under Art. 134 or 142 or 144 and not 6 years under Art. 120

41 M. 124=33 M.L.J. 357, referred to.

V. V. Srinivasa Aiyangar for Appellant.

K. Bhasyam Aiyangar for Respondent.

N. S.

Phillips and Devadoss, JJ. *27th February,* 1928.	A. S. No. 150 of 1924.

T. P. Act, S. 95—Prior and puisne mortgagees—Purchase of one of the items by the puisne mortgagee—Subsequent taking of assignment of prior mortgage by puisne mortgagee—Effect.

Two properties were successively mortgaged to two persons and subsequently one of the properties was mortgaged to another. The latter purchased the equity of redemption in respect of his mortgaged property and subsequently took an assignment of the two prior encumbrances.

Held, that the plaintiff was in the position of a co-mortgagor redeeming the entire property by virtue of his purchase of the equity of redemption and the assignment of the prior mortgages would not confer on him a right to enforce them as mortgagee but that his right was only a right of contribution under S. 95 of the T. P. Act.

T. M. Krishnaswami Aiyar for Appellant.

K. S. Krishnaswami Aiyangar for Respondent.

N. S.

Ramesam and Thiruvenkata Achariar, JJ. *27th February,* 1928.	S. A. No. 253 of 1928.

Hindu Law—Joint family—Alienation by father—Void or voidable—Right of after-born son to question.

An alienation of the joint family properties by the father for purposes not binding on the family is void and not voidable.

35 M. 177=20 M. L. J. 371, followed.

A son born after an alienation made by the father can question that alienation as having been made for purposes not binding on the family, even though the alienation was left unquestioned by the other co-parceners.

K. S. Champakesa Aiyangar for Appellant.

N. S.

Ramesam and Devadoss, JJ. *28th February,* 1928.	L. P. A. No. 79 of 1927.

Religious Endowment—Temple—Archaka in management—Absence of trustees—Right of archaka to sue trespasser

In the absence of regularly recognised dharmakartas or trustees, the archaka in management of a temple is entitled to bring a suit for recovery of temple property from a trespasser.

T. R. Ramachandra Aiyar for Appellant.

B. Satyanarayana for Respondent.

N. S.

Waller, J. *28th February,* 1928.	C. S. No. 327 of 1927.

Pensions Act, Ss. 4 and 6—Dismissed Government servant—Suit against Government for pension—Maintainability.

N. R. C.

A Government servant whose services were dispensed with as the department in which he was engaged was closed cannot institute a suit in a Civil Court against the Government for the recovery of damages for the witholding of pension The Civil Court has no jurisdiction to pass any order affecting the liability of the Government to pay pension.

N. S. Srinivasa Aiyar for the Plaintiff.

The Advocate-General for the Gvernment.

N. S.

Devadoss and Jackson, JJ.
29th February, 1928. } C. M. A No. 539 of 1925 and C. R. P. No. 1324 of 1925.

Civil Procedure Code, S. 92—Scheme decree—Provision for application for alteration or modification of the scheme—Application for fixing remuneration of archaka and determination of the amount to be spent on festivals—Maintainability.

Provision was made in a scheme decree for the filing of applications for carrying out the directions of the scheme and for alteration of its terms. In prursuance of this, an application was made for fixing the remuneration of the archaka and for the determination of the amounts to be spent by the trustees for certain festivals and an order was passed fixing the amounts.

Held, that the order of the lower court was without jurisdiction, as the provision in the scheme decree for the application was *ultra vires*.

53 M. L. J. 792 (F. B.), followed.

B. Somayya for Appellant.

G. Lakshmanna and *K. Ramamurthi* for Respondent.

N. S.

Devadoss and Jackson, JJ.
29th February, 1928. } S. R. Nos. 7968, 7971 and 7974 of 1927.

Land Acquisition Act, S. 54—Award—Claims of rival parties—No dispute as to the amount—Appeal—Forum—court-fees—Court Fees Act, S. 8, and Sch. I, Art. I.

In a land acquisition case, the amount of the award was claimed wholly by the inamdar on the ground that he was the full owner of the acquired lands while the tenants claimed a portion of it on the ground that they owned the kudivaram right in the lands. The Subordinate Judge decided this question in favour of the inamdar. The tenants preferred an appeal to the High Court.

Held, (1) that S. 54 of the Land Acquisition Act did not apply to the case as the dispute related to the rival claims of the parties to the amount of the award, and not to the amount of the award itself, but that the decision of the Subordinate Judge was a "decree" from which an appeal would lie under S. 96 of the C P. Code, and, as the value of the subject matter in dispute was not more than Rs. 3,000, the appeal lay to the District Court and not to the High Court,

and (2) that the amount of the court-fee payable was *ad valorem* on the value of the amount involved under Art. 1 of Sch. I of the Court Fees Act.

V. Narayanan for Appellant.

S. Muthiah Mudaliar for inamdar.

The Government Pleader for the Government.

N. S.

Thiruvenkata Achariar, J.
1st March, 1928. } C. R. P. No. 621 of 1926.

Civil Procedure Code, S. 47—Maintenance decree—Charge on properties—Subsequent sale of the properties—Execution application—Order on—Appeal —Revision —Memo. of objections in—Maintainability.

A decree for maintenance was passed creating a charge on the properties. The properties were alienated by the judgment-debtor subsequent to the decree. The decree-holder filed an execution application for attachment of crops and the samewas dismissed. He filed a Civil Revision Petition.

Held, (1) that the C. R. P. was not maintainable, as an appeal lay under S. 47, C. P. Code, against the order disallowing execution, the purchaser from the judgment-debtor being the representative in interest of the judgment-debtor,

and (2) that as the C. R. P. was not competent, the memo. of objections in it was also not competent.

Obiter: A memo. of objections can be filed in a Civil Revision Petition.

D. Ramasami Aiyangar for Petitioner.

K. Bhashyam Aiyangar and *T. R. Srinivasan* for Respondent.

N. S.

Phillips and Odgers, JJ.
5th March, 1928. } A. S. No. 136 of 1924.

Limitation Act, Art. 120—Temple property—Mortgage of, by trustee—Suit by worshipper for declaration that mortgage is not binding on the trust—Starting point of limitation.

The trustee of a temple created a mortgage, and one of the worshippers brought a suit for declaration that the mortgage was not binding on the trust on the ground that the defendant set up a fraudulent title in himself to the detriment of the trust.

Held, that the period of limitation for the suit was 6 years and limitation commenced to run *not* from the date of the mortgage but from the date when the plaintiff came to know of the mortgage.

33 M. 31, distinguished.

V. V. Srinivasa Aiyangar, A. Krishnasami Aiyar and *K. Desikachari* for Appellant.

P. R. Ganapati Aiyar and *V. Krishna Mohan* for Respondent.

N. S.

Thiruvenkata Achariar, J.
6th March, 1928. } C. R. P. No. 180 of 1927.

Civil Procedure Code, O. 21, R. 89—Sale of insolvent's property—Purchase by decree-holder—Application by Official Receiver to set aside sale—Deposit of decree amount—Official Receiver's right to claim the amount—Provincial Insolvency Act, Ss. 51 and 52.

The insolvent's property was sold in court auction in execution of a decree against him and the Official Receiver put in an application under O. 21, R. 89, C. P. C., to set aside the sale on depositing the decree amount. The Official Receiver further claimed that, on the setting aside of the sale, the decree-holder purchaser was not entitled to the amount but he was the person entitled under Ss. 51 and 52 of the Provincial Insolvency Act.

Held, that the amount deposited into Court was "assets realised in execution" within the meaning of S. 51 of the Provincial Insolvency Act and the decree-holder was entitled to it.

T. S. Anantaraman for Petitioner.

V. N. Shama Rao for Respondent.

N. S.

Thiruvenkata Achariar, J.
6th March, 1928. } C. R. P. No. 408 of 1926.

Provincial Small Cause Courts Act, Art. 31—Suit for profits of immoveable property—Suit for damages for wrongful tapping of cocoanut trees.

A suit for damages on the ground that the defendant trespassed into the plaintiff's land and tapped toddy from two cocoanut trees belonging to him is not a suit for profits of immoveable property within the meaning of Art. 31 of the Provincial Small Cause Courts Act, but a suit for compensation for trespass upon immoveable property.

35 M. 726=21 M. L. J. 442, referred to.

A. Seshachari for *K. Krishnaswami Aiyangar* for Petitioner.

Respondent unrepresented.

N. S.

Phillips and Devadoss, JJ.
7th March, 1928. } A. S. No. 96 of 1924.

Civil Procedure Code, O. 38, Rr. 8 and 9—Attachment before judgment—Dismissal of suit for default—Attachment, if terminates ipso facto*—Order of Court—Necessity of—Subsequent restoration of suit—Effect.*

An attachment before judgment does not terminate *ipso facto* on the dismissal of the suit in which it was made. There must be an express order of court cancelling the attachment.

Where an order of attachment before judgment was made in a suit and subsequently the suit was dismissed for default but no order was made by the Court cancelling the attachment, and subsequently the suit was restored to file.

Held, that the attachment did not come to an end on the dismissal of the suit but continued to have effect, as the effect of the restoration was to revive all interlocutory orders passed up to the stage when the suit was dismissed.

C. S. Venkatachariar for Appellant.

T. M. Krishnaswami Aiyar for *S. S. Ramachandra Aiyar* and *T. S. Anantaraman* for Respondent.

N. S.

Waller and Madhavan Nair, JJ.
8th March, 1928.

L. P. A. No. 34 of 1924.

Temple Committee—Suspension of pujaris of temple—Absence of intention of trustee—Effect.

Where a temple is managed by trustees, the temple committee has no power to pass any direct orders, such as orders of suspension, relating to the temple servants, but can only act through the trustees.

K. R. Rangasawmi Aiyangar and *Salem Ramasawmi Aiyar* for Appellant.

S. T. Srinivasagopalachari for Respondent.

N. S.

Devadoss and Jackson, JJ.
9th March, 1928.

C. M. A. No. 523 of 1925.

Provincial Insolvency Act, S. 9—Creditor's application to adjudicate the debtor as insolvent—Application filed after three months—Jurisdiction of Court to excuse delay—Application previously filed in the District Munsif's Court—Deduction of time spent during the pendency of the application there—Limitation Act, Ss. 5 and 14.

An application was filed in the District Munsif's Court for adjudicating the debtor as an insolvent but was dismissed on the ground that that Court had no jurisdiction to entertain the application. He then applied to the District Court. On the date of the application to the District Court, more than three months after the act of insolvency relied on in the application had expired. The applicant claimed deduction of the period taken during the pendency of the application before the District Munsif under S. 14 of the Limitation Act.

Held that, though S. 14 of the Limitation Act was not applicable to the proceedings under the Insolvency Act, the fact that the petitioner was conducting proceedings in another court might be a sufficient cause under S. 5 of the Limitation Act, but, in the present case, the delay cannot be excused as it must be well-known to the lawyers and the litigants that the Munsif's Court had no jurisdiction to entertain such application.

B. Somayya for Appellant.

T. Appaji Rao Amicus Curriae.

N. S.

Kumaraswami Sastri and Reilly, JJ.
9th March, 1928.

S. A. Nos. 515 and 516 of 1925.

Religious Endowment—Hereditary archaka of temple—Order of suspension by trustees—Notice of enquiry—Necessity of—Two trustees passing orders without consulting the third—Validity of the order.

N R C

A hereditary archaka of a temple is entitled to be given notice of enquiry before any adverse order interdicting him from performing the worship of the temple is passed against him.

An order of suspension of a hereditary archaka by two of the trustees without consulting the third is illegal.

S. Varadachariar, K. Narasimha Aiyangar and *R. Rajagopala Aiyangar* for Appellant.

S. Muthiah Mudaliar for Respondent.

N. S.

Kumarasawmi Sastri and Reilly, JJ. *12th March, 1928.* — S. A. No. 392 of 1925.

Partnership—Dissolution—One partner paying a mortgage debt due by the partnership—Suit for contribution against another—Maintainability.

After dissolution of a partnership, one partner cannot maintain a suit for contribution in respect of monies paid by him in discharge of a mortgage debt due by the partnership.

49 I.A. 181=45 M. 378=43 M. L. J. 305 (P. C.), referred to.

K. Bhashyam Aiyangar for Appellant.

N. Sivaramakrishna Aiyar for *K. Venkatcraghavachariar* for Respondent.

N. S.

Kumaraswami Sastri and Reilly, JJ. *12th March, 1928.* — S. A. No. 401 of 1925.

Subrogation—Puisne mortgagee paying off prior mortgage with monies expressly reserved with him by the mortgagor.

Where a puisne mortgagee paid off the prior mortgage with the monies expressly reserved with him for that purpose, he acts not merely as the agent of the mortgagor but by virtue of his interest in his own mortgage and is therefore entitled to the rights of the prior mortgagee by subrogation.

T. M. Ramaswami Aiyar for Appellant.

R. Krishnaswami Aiyangar for Respondent.

N. S.

Kumarasawmi Sastri and Reilly, JJ. *13th March, 1928.* — S. A. No. 139 of 1925.

Limitation Act, Art. 124—Hereditary archaka of temple—Suit for recovery of office from trustees and their appointees—Other trustees added after 12 years—Limitation—Second appeal—Omission to consider documents by the lower court—Interference.

The hereditary archaka of a temple brought a suit for the recovery of the office of archaka against the trustees of the temple who

dispossessed him and their appointees within 12 years from the date of the dispossession and subsequently added the other trustees as parties to the suit more than 12 years after that date.

Held, (1) that the onus of proof was on the defendants to prove when the adverse possession commenced under Art. 124 of the Limitation Act,

(2) that the suit was not barred even as against the trestees added after the 12 years period, and

(3) that the omission by the lower appellate Court to consider certain documents bearing on the question of adverse possession was no ground for interference in second appeal.

41 M. 561=34 M. L. J. 381 (F. B.), referred to.

T. Rangachariar and *K. S. Krishnaswami Aiyangar* for Appellant.

V. V. Srinivasa Aiyangar, T. D Srinivasachariar, C. Padmanabha Aiyangar and *R. Gopalswami Aiyangar* for Respondents.

N. S.

Waller and Madhavan Nair, JJ.
14th March, 1928.
S. A. No. 874 of 1925.

Jurisdiction—Civil Court—Suit to recover religious office to which no emoluments are attached.

A suit to enforce a right in respect of a religious office to which emoluments are attached is cognizable in a Civil Court, whereas a suit to recover offices to which no emoluments are attached but which would entitle the holder of the office to receive voluntary offerings is not cognizable in the Civil Court.

19 M. 62=5 M.L.J. 209, 37 A. 412 and 1 P.L.J. 381, referred to.

B. Jagannadha Doss for Appellant.

V. Govindarajachari for Respondent.

N. S.

Devadoss and Jackson, JJ.
14th March, 1928.
C. R. P. Nos. 660 and 661 of 1926.

Partition—Suit for—Preliminary decree—Dismissal of suit after the preliminary decree—Validity of.

An order dismissing a suit for partition after the passing of the preliminary decree is erroneous and is made without jurisdiction. But it cannot be considered as an absolute nullity and further proceedings cannot be taken without setting aside that order.

Ch. Raghava Rao and *V. Pattabhirama Sastri* for Petitioner.

K. Ramachandra Aiyar Amicus Curiae.

N. S.

The Chief Justice and Madhavan Nair, JJ.
16th March, 1928.

O. S. A. No. 95 of 1926.

Letters Patent (Madras), Clause 12—Property outside Madras—Contract to sell, entered into in Madras—Suit for specific performance in the High Court—Maintainability.

The following question was referred to a Full Bench:—

Is a suit for specific performance of a contract to sell lands outside Madras which was entered into in Madras, a suit for land within the meaning of clause 12 of the Letters Patent and so not cognizable by the High Court exercising its ordinary original civil jurisdiction.

T. M. Krishnaswami Aiyar and *M. Subbaraya Aiyar* for Appellant.

K. S. Krishnaswami Aiyangar, T. N. C. Srinivasavaradachari and *T. Ramachandra Rao* for Respondent.

N. S.

The Chief Justice, Ramsam, Wallace, Beasley and Thiruvenkata Achariar, JJ.
20th March, 1928.

Ref. Cases Nos. 21 and 22 of 1926.

Income-tax Act, S. 10 (2) (iii)—Partnership—Partner's advances over and above the initial capital—Agreement that interest should be paid on the advances—Interest paid whether an admissible deduction.

Where a partner, in addition to the initial capital subscribed by him, lends to the partnership a certain sum of money on the distinct understanding that in respect of this loan he is to receive interest from the partnership.

Held, that the interest paid to the partner is a legitimate item of business expenditure within the meaning of S. 10 (2) (iii) of the Income-tax Act in the computation of the income of the firm.

K. S. Krishnaswami Aiyangar and *V. Rajagopala Aiyar* for Assessee.

M. Patanjali Sastri for the Commissioner of Income-tax.

N. S.

Kumaraswami Sastri and Reilly, JJ.
23rd March, 1928.

S. A. No. 565 of 1927.

Madras Estates Land Act, S. 192—Order of remand in a rent suit—Appeal.

No appeal lies to the High Court from an order of remand passed by a District Judge in an appeal from a suit filed under the Madras Estates Land Act for recovery of rent.

1 L. W. 667 and 12 I. C. 146, followed.

P. Satyanarayana Rao for Appellant.

V. Govindarajachari for Respondent.

N. S.

Kumaraswami Sastri and Reilly, JJ.
13th March, 1928.

A. S. No. 456 of 1923.

Hindu Law—Step-mother taking possession of husband's properties—Necessary expenses incurred by her—Subsequent recovery of the properties by the reversioner—Right of step-mother to recover the amount of the necessary expenses—Limitation Act, Art. 61—Commencement of limitation.

The step-mother of a deceased person who entered into possession of his properties on his death executed a mortgage to the plaintiffs. Subsequently, the reversioners of the deceased person filed a suit and recovered the properties from her. This suit was finally disposed of in 1920. The plaintiffs and the step-mother instituted a suit upon the mortgage and impleaded the reversioners as defendants. It was found that expenses to the extent of Rs. 600 were incurred in 1916-1918 for purposes binding on the estate.

Held (1) that the step-mother who had a right of residence and maintenance could not be considered to have been in wrongful possession of the properties and therefore she could be entitled to recover the expenses incurred by her for the purpose of benefiting the estate, and consequently the plaintiffs could be entitled to recover the sum of Rs. 600 if it was not barred; (2) that Article 61 of the Limitation Act applied to this claim, as no charge could be said to have been created in respect of the monies spent by her, and that the claim was barred as time must be taken to have begun to run either from the date of the payment or at least from the date of the demand made by the reversioners for the recovery of the estate, and *not* from the date of the final decision, viz., 1920.

K. S. Sankara Aiyar for Appellant.

N. Rajagopalachari for Respondent.

N. S.

Phillips and Devadoss, JJ.
14th March, 1928.

A. S. No. 447 of 1923.

Mortgage—Co-mortgagees—Part adjustment by one alone—If binding on the other—Suit by the other for his share of the mortgage amount—Maintainability.

One of two co-mortgagees took a sale deed for portion of the mortgaged properties, in discharge of the mortgage. The other co-mortgagee filed a suit for the recovery of his share of the mortgage amount against the mortgaged properties.

Held (1) that the arrangement by the defendant co-mortgagee with the mortgagor did not amount to a full discharge of the mortgage and consequently was not binding upon the plaintiff; (2) that the suit for recovery of the plaintiff's share of the mortgage amount was maintainable as the defendant co-mortgagee admitted that his share of the mortgage amount was discharged by the mortgagor; (3) that the plaintiff was entitled to enforce his mortgage debt as against every portion of the mortgage security.

45 All. 46, dissented.

N R C

V. Narayana Aiyar, T. V. Ramanatha Aiyar and *T. V. Venkatarama Aiyar* for Appellant.

T. M. Krishnaswami Aiyar, S. S. Ramachandra Aiyar, K. Periasami Goundar for Respondent.

N. S.

Jackson, J.
19th March, 1928. } C. R. P. Nos. 787 and 798 of 1927.

Madras Local Boards Act, S. 228—Levy of professional tax—Suit for refund on the ground that the plaintiff was not carrying on money-lending business—Maintainability.

The plaintiff was assessed professional tax by the Taluk Board on the ground that he got the income by money-lending business. The plaintiff filed the suit for recovery of the amount on the ground that he was not doing money-lending business.

Held, that the suit was barred by S. 228 of the Local Boards Act, as the question whether the plaintiff carried on money-lending business or not was a question of fact.

V. S. Narasimhachari for *P. Chenchiah* for Petitioner.

H. Suryanarayana for Respondent.

N. S.

Wallace and Tiruvenkatachari, JJ.
19th March, 1928. } S. A. No. 1270 of 1924.

Civil Procedure Code, O. 23, R. 1—Preliminary decree—Subsequent withdrawal of suit—Effect—Applicability to execution proceedings—Minor—Irregular procedure by guardian—Effect.

The provisions of O. 23, R. 1, Civil Procedure Code, do not apply in cases where either a preliminary or final decree has been passed.

The provisions of O. 23, R. 1, do not apply to execution proceedings.

An irregular procedure adopted by the guardian of a minor should not prejudice the rights of the minor especially where the ill-advised act of procedure was due to the direction of court itself.

C. Rama Rao for Appellant.

A. Ramachandra Aiyar and *B. V. Raghava Raju* for Respondent.

N. S.

Phillips and Odgers, JJ.
21st March, 1928. } A. S. No. 181 of 1925.

Poramboke lands—Right of Government to levy assessment—Easement—Person claiming as owner—If can be granted relief by way of easement.

The Government has a prerogative right to levy assessment in respect of all lands, unless there is an agreement expressed or implied not to levy the same. The mere fact that a land is poramboke does not mean that the Government is not entitled to levy assessment in respect

of it. Poramboke can be converted into iyan land and Government can recover revenue.

A person who claims as owner of certain properties cannot get a relief by way of easement over the properties.

The Government Pleader for Appellant.

T. Rangachariar, P. Marthandam Pillai and *A. Deivanayagam Pillai* for Respondent.

N. S.

Wallace and Tiruvenkatachari, JJ. *21st March, 1928.* — C. M. A. No. 561 of 1925.

Limitation Act, S. 15—Civil Procedure Code, S. 48—Execution of decree barred by lapse of 12 years—Applicability of section.

S. 15 of the Limitation Act cannot be read so as to overrule S. 48, Civil Procedure Code, which is self-contained. It applies only in regard to periods of limitation prescribed in the schedule to the Limitation Act.

K. Kameswara Rao for Appellant.

B. Satyanarayana for Respondent.

N. S.

Devadoss, J. *21st March, 1928.* — Crl. Revision Case No. 966 of 1927.

Madras City Municipal Act, S. 287—Owner of Coffee Hotel premises—Lease of premises for 10 years—Owner not taking out license—Owner if can be convicted.

The owner of a coffee hotel premises who has leased the premises for a period of 10 years cannot be said to have any beneficial ownership and consequently cannot be convicted for failure to take out license under S. 287, City Municipal Act.

K. P. Ramakrishna Aiyar for Petitioner.

V. Rajagopalachari for Crown Prosecutor.

S. Rangasami Aiyangar for Complainant.

N. S.

Jackson, J. *26th March, 1928.* — C. R. P. No. 984 of 1927.

Madras District Municipalities Act, S. 354—Assessment of professional tax—Suit for refund on the ground that the tax was fixed maliciously and arbitrarily—Maintainability.

A suit for refund of professional tax collected from the plaintiff on the ground that the tax was levied maliciously and arbitrarily is maintainable in the Civil Court.

K. Sreenivasa Rao for Appellant.

B. Somayya for Respondent.

N. S.

Devadoss, J.
26th March, 1928. } C. R. P. No. 321 of 1927.

Madras Local Boards Act, S. 21—Suit against a Taluk Board —President engaging a vakil—Permission of the Council not obtained—Right of pleader to have his fees paid from the Taluk Board—Doctrine of part-performance.

Where a vakil was engaged by the President of a Taluk Board to defend a suit brought against the Board and the Taluk Board subsequently repudiated the liability to pay his fees and expenses incurred for the suit on the ground that the President had no power to engage the vakil without sanction from the Board,

Held, that the President could engage vakils to defend suits filed against the Board by virtue of the executive authority vested in him under S. 21 of the Local Boards Act as there was no provision in the Act expressly taking away that power, and also that, under the doctrine of part-performance, the Board was bound to pay the fees and expenses incurred by a vakil who acted in such circumstances, though the sanction of the Board was not obtained for the same.

P. Satyanarayana Rao for Petitioner.

K. Bhimasankaram for *B. Satyanarayana* for Taluk Board.

V. Pattabhirama Sastri for the former President.

Devadoss, J.
30th March, 1928. } C. R. P. No. 1541 of 1927.

Madras District Municipalities Act—Election to Municipality —Recording of votes by illiterate voters—Presence of the candidate or his agent—Necessity of.

There is nothing in the rules which requires the presence of the candidate or his agent at the time of the recording of the votes by the illiterate voters.

T. M. Krishnaswami Aiyar and *T. M. Ramaswami Aiyar* for Petitioner.

T. Rangachariar and *V. N. Venkatavaradachariar* for Respondent.

N. S.

Beasley, J.
30th March, 1928. } C. S. No. 356 of 1927.

Madras City Municipal Act, Ss. 129 and 349—Bye-laws framed by Corporation regarding refund of timber taxes—Legality.

The Corporation has power under Ss. 129 and 349 of the City Municipal Act to frame bye-laws imposing conditions regarding the refund of timber taxes.

K. Rajah Aiyar and *V. Ramaswami Aiyar* for Plaintiff.

S. Rangaswami Aiyangar and *P. Chakrapani Aiyangar* for Defendant.

N. S.

Devadoss and Jackson, JJ. *14th March,* 1928. C. R. P. No. 843 of 1927.

Provincial Insolvency Act—Ss. 28 *and* 78—*Limitation Act,* S. 15—*Money due on accounts—Subsequent adjudication—Suit filed for recovery of money against insolvent with leave of court before annulment—If insolvency stops running of limitation.*

The defendant owed money to plaintiff on accounts which were settled on 16th August, 1923. The defendant was adjudicated insolvent on 2nd February, 1924. Defendant applied for discharge in insolvency which was refused. Plaintiff obtained leave of court to sue defendant on 22nd September 1926 and filed the present suit on 10th January, 1927. The question arose if the suit was barred by limitation and whether insolvency operates as a stay of suits. The lower court decreed the suit.

Held (on revision) that the mere fact of insolvency will not operate as a stay of all proceedings against the insolvent, and as time had already begun to run prior to insolvency and as there was no annulment of adjudication, S. 78 of the Provincial Insolzency Act will not save limitation.

L. R. (1914) 2 Ch. 68 and I. L. R. 42 M. 319=36 M.L.J. 104, followed.

K. P. Ramakrishna Aiyar for Petitioner.

K. Kuttikrishna Menon for Respondent.

N. S.

Wallace and Tiruvenkata Achariar, JJ. *21st March,* 1928. A. S. No. 355 of 1922.

Limitation Act, Arts. 14, 120, 142 *and* 144—*Village service inam in permanently settled estate—Enfranchisement by Government—Suit by owner of the estate—Limitation—Madras Proprietary Estates' Village Service Act (II of* 1894), S. 17—*Validity of the enfranchisement—Burden of proof—Paimash registers—Probative value of.*

Certain village service inams in the Pithapur and Palivela Estates were enfranchised by the Government under S. 17 of the Madras Proprietary Estates' Village Service Act (II of 1894). The enfranchisement was declared to come into effect on 1st January 1907. In accordance with the requirements of S. 80 of the Civil Procedure Code, notice of suit was given by the Zamindar to the Government on 24th December, 1918, questioning the validity of the enfranchisement and a suit was filed by the zamindar on 1st March 1919 against the Government and inamdars for a declaration that the enfranchisement was invalid, for an injunction restraining the Government from collectng quit rent or otherwise interfering with the exercise by the plaintiff of his rights in the land and for such possession of the lands as the plaintiff may be found to be entitled to. It was contended for the Government that the suit was barred by limitation either under Art. 14 of the Limitation Act or under Art. 120.

Held :—(1) that the enfranchisement was really unauthorised as alleged by the plaintiff and it was void and without jurisdiction and it

was unnecessary to set it aside and that therefore Art. 14 was inapplicable ;

(2) that the suit was in substance a suit for a possessory relief and was governed by either Art. 142 or Art. 144 and not by Art. 120 :

and (3) that the suit was therefore in time inasmuch as it was filed within 12 years excluding the two months covered by the suit notice.

Case Law, reviewed.

Held further, (on the merits) (i) that the village service inams other than karnam service inams were taken into account at the time of the permanent settlement ; (ii) that they are not lakhiraj lands within the meaning of S. 4 of the Madras Permanent Settlement Reg. XXV of 1802 ; (iii) that they could be enfranchised by the Government under S. 17 of the Madras Proprietary Estates Village Service Act II of 1894 only when they were granted or continued by the state within the meaning of that section ; (iv) that the burden of proving that they were not so granted or continued lay on the person questioning the validity of the enfranchisement which is *prima facie* evidence that the conditions laid down in S. 17 exist.

Case law, considered.

Their Lordships further considered the probative value of paimash registers in deciding whether a particular inam is pre-settlement or post-settlement.

The Government Pleader instructed by *C. V. Harihara Aiyar* for the Government (Appellant).

A. Krishnaswami Aiyar and *V. Govindarajachari* for Respondent.

N. S.

Madhavan Nair and *Jackson, JJ.* *27th March*, 1928. — C.M.S.A. No. 224 of 1927 and C. R. P. No. 1719 of 1927.

Surety bond—Strict construction.

A judgment-debtor was released on the execution of a bond by a surety to the effect that he will produce the judgment-debtor whenever called upon to do so till the judgment-debtor, who would apply to be adjudicated an insolvent, apply for discharge and order was passed thereon. The judgment-debtor was adjudicated an insolvent and subsequently put in an application for discharge. But this application was dismissed on opposition by some creditors.

Held, that a surety bond must be construed strictly and on the construction of this bond the surety must be taken to have complied with the terms of the bond when the insolvent put in application for discharge and appeared before the Court though the order that was passed was one dismissing the petition.

Srinivasaraghavan and *Thiagarajan* for Appellant.

K. Bhashyam Aiyangar and *T. R. Srinivasan* for Respondent.

N. S.

Phillips and Reilly, JJ.
28th March, 1928.

C. M. P. No. 5080 of 1927.

Civil Procedure Code, S. 109—Application for leave to appeal to Privy Council--Appeal dismissed on the ground of appellant having committed contempt of court—Applicant still in contempt on the date of the filing of the application—Effect.

An Appeal was dismissed by the High Court on the ground that the appellant had committed contempt of court by not obeying the order of the Court and the appeal could not be postponed indefinitely to enable the appellant to comply with the terms of the order. An application for leave to appeal to the Privy Council against the dismissal of this appeal was filed.

Held, that a party in contempt of Court had no right to come before the court and ask the court for any action to be taken, though as a defendant or respondent he would not lose the right to put forward any objection or plea in any proceeding pending against him, and as the applicant was still in contempt on the date of the filing of the application he had no right of audience and the application must be dismissed.

T. M. Krishnaswami Aiyar, K. Desikachari and *K. Ramanathan Chettiar* for Petitioner.

C. S. Venkatachari and *D. Ramaswami Aiyangar* for Respondent.

N. S.

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The Chief Justice and Madhavan Nair, J.
2nd April, 1928.

Crl. Revision Case No. 821 of 1927.

Criminal Procedure Code, S. 162—Oral statements made to the police by the prosecution witness while the case was under investigation—Admissibility.

The question as to the admissibility during the trial, of the oral statements made by a prosecution witness to the police while the case was under investigation was referred to a Full Bench.

Nugent Grant and *C. Sambasiva Rao* for Petitioner.

The Public Prosecutor for the Crown.

N. S.

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Kumaraswami Sastri and Reilly, JJ.
3rd April, 1928.

L. P. A. No. 13 of 1928.

Civil Procedure Code, O. 21, R. 66--Order relating to the settlement of sale proclamation—Appeal.

Orders relating to the settlement of a sale proclamation under O. 21, R. 66, C. P. Code, are not judicial orders but are merely administrative and ministerial orders and consequently are not appealable, unless they can be construed to fall under S. 47.

27 M. 259=14 M.L.J. 57 (F. B.), followed.

T. V. Venkatrama Aiyar for *B. Venkatraman* for Appellant.

C. S. Venkatachariar for Respondent.

N. S.

Devadoss, J.
3rd April, 1928. } C. M. A. No. 395 of 1926.

Provincial Insolvency Act, S. 28—Hindu trading family—Adjudication of manager as insolvent—Manager's power to sell family properties for debts—If vests in the Official Receiver.

Where the manager of a joint Hindu trading family is adjudicated an insolvent, the power of the manager to sell the joint family properties for debts binding on the joint family vests in the Official Reciver, and the Official Receiver can exercise such power and sell the properties for such debts.

Case law, reviewed.

T. R. Arunachala Aiyar for *B. Somayya* for Appellant.

V. S. Narasimhachari for Respondent.

N. S.

Madhavan Nair and Jackson, JJ.
4th April, 1928. } C. M. A. No. 467 of 1927.

Execution—Application for transfer of decree to another Court for execution—Notice to judgment-debtor—Objection by judgment-debtor that decree not executable—Duty of court to decide, before ordering transfer.

An application was filed for the transfer of the decree to another court for execution. After notice, the judgment-debtor appeared and raised an objection that the decree was not executable.

Held, that as, after notice, the judgment-debtor was bound to put forward all objections to the executability of the decree, the court was bound to decide on the pleas raised by the judgment-debtor before ordering the transfer of the decree.

47 M. 641=47 M. L. J. 4, referred to.

B. Vinayaka Rao for Appellant.

A. Swaminatha Aiyar for Respondent.

N. S.

Ramesam, J.
4th April, 1928.

C. R. P. No. 674 of 1927.

Easements Act, S. 15—Inamdar using zamindar's tank water for over 20 years without assessment—Right by prescription.

An Inamdar has been using zamindar's tank water for second crop for over twenty years freely without any assessment. The Zamindar filed suits claiming compensation for unauthorised use of water. The District Munsif applying 44 M. 534=40 M. L. J. 213 gave decree to the plaintiff on the ground that the Defendants have not made out usage.

Held that the decision in 44 M. 534=40 M. L. J. 213 was a case between landlord and tenant and had no application to this case. *Held also* that twenty years' use of water certainly will make out an easement by prescriptive right.

7 I. A. 240=6 Cal. 394 (P. C.), referred to.

K. Kuppuswami Aiyar for Petitioner.

M. Venkatasubbaiah for *A. Krishnaswami Aiyar* for Respondent.

Phillips and Madhavan Nair, JJ.
10th April, 1928.

C. M. S. A. No. 116 of 1927.

Limitation Act, S. 15 and Art. 182, cl. (5)—Application for execution by attaching decree-holder—Execution Petition filed more than three years after prior Execution Petition—Interim injunction got by attaching decree-holder against judgment-debtor—If saves limitation.

An attaching decreee-holder applied for execution of attached decree more than three years after the *prior* Execution Petition. Before he got a final decree in his own suit he had got an interim injunction against the decree-holder of the attached decree preventing him from executing his decree, and relied upon the injunction to save limitation under S. 15 of the Limitation Act,

Held, S. 15 of the Limitation Act applied and the present Execution Petition was within time as the injunction prevented execution of the decree by the decree-holder and the attaching decree-holder was a representative of the original decree-holder and could not execute the decree himself,

K. P. Ramakrishna Aiyar for Appellant.

V. P. Karunakaran Nambiar for Respondent.

Ramesam, J.
11th April, 1928,

S. A. No. 415 of 1924.

Limitation Act, S. 20 and Art. 149—Suit against assignee of Government—Acknowledgment of title of Government—If saves limitation.

In a suit against an assignee (Pattadar) from Government, an acknowledgment by plaintiff of the title of Government saves limitation and the assignee has a fresh period from that date.

N. R. C.

Semble. When an assignee is in possession, and a suit is brought against him, whether the 12 years' period or 60 years' period will apply.

30 Mad. 245=17 M. L. J. 174, referred to

The Advocate-General (C. V. Ananthakrishna Aiyar) and *K. P. Ramakrishna Aiyar* for Appellant.

K. S. Jayarama Aiyar for Respondent.

The Chief Justice and Odgers, J.
11th April, 1928.

A. S. No. 235 of 1924.

Transfer of Property Amendment Acts (XXVII of 1926 and X of 1927)—If retrospective—Signatures of registering officer and identifying witnesses—If amount to attestation.

Their Lordships referred for the decision of a Full Bench the following questions:—

(1) Whether Acts XXVII of 1926 and X of 1927 are retrospective in their nature so as to apply to the documents executed on a date prior to their coming into force.

(2) Whether the signatures of the registering officer and of the identifying witnesses affixed to the registration endorsement under section 58 of the Indian Registration Act amount to a sufficient attestation within the meaning of section 59 of the Transfer of Property Act read with the aforesaid amending Act.

(3) Consequently whether App. 170 of 1925 (decision of Phillips and Odgers, JJ., to the effect that the above Acts were not retrospective) was rightly decided?

T. V. Venkatarama Aiyar and *T. V. Ramanatha Aiyar* for appellant.

T. V. Muthukrishna Aiyar, N. Muthuswami Aiyar, T. S. Subramania Aiyar and *T. S. Srinivasa Aiyar* for respondents.

Phillips, Odgers and Venkatasubba Rao, JJ.
12th April, 1928.

C. R. P. Nos. 1027 and 1028 of 1924 and 301 of 1927.

Civil Procedure Code, S. 115—Government of India Act, S. 107—Orders of the Board of Revenue under the Madras Estates Land Act—If revisable by the High Court.

Phillips and Odgers, JJ.—The Board of Revenue is not a civil court subordinate to the High Court and orders passed by the Board under the Madras Estates Land Act are not revisable by the High Court.

49 M. 499, overruled.

Venkatasubba Rao, J.—Orders passed by the Board of Revenue under Ss. 190 and 205 of the Madras Estates Land Act are capable of being revised by the High Court, as the Board of Revenue acting under these sections is a civil court.

A. Krishnaswami Aiyar and *C. Sambasiva Rao* for Petitioner.

T. R. Venkatarama Sastri with the Government Pleader and *B. Jagannadha Das* for Respondent.

N. S.

Kumaraswami Sastri and Reilly, JJ.
16th April, 1928.

S. A. No. 1468 of 1923.

Civil Procedure Code, Order 22—Death of a respondent in an appeal—Application to bring on record legal representatives—Notice to other respondents—Necessity of.

Where one of the respondents in an appeal dies and an application is filed to bring his legal representatives on record, notice of the application must be given to the other respondents in the appeal But, where the deceased respondent's interest in the appeal was not adverse to that of the appellant and notice of the application was not given to the other respondents before bringing on record the legal representatives,

Held, that the appeal did not abate by reason of the failure to give the notice, as the appeal could have been proceeded with even if the deceased respondent had not been made a party to the appeal.

C. S. Venkatachariar, L. S. Veeraraghava Iyer, and *D. Ramaswami Aiyangar* for Appellant.

K. S. Jayarama Aiyar, A. Ramakrishna Aiyar, K. P. Ramakrishna Aiyar, and *M. S. Varadachari* for Respondents.

N. S.

Phillips and Odgers, JJ.
19th April, 1928.

A. S. Nos. 130 and 193 of 1924.

Madras Rivers Conservancy Act, Ss. 11 and 16—Government taking possession of river—Possession of lankas demanded by zamindar—Delay in delivering possession—Zamindar's right to mesne profits.

Where the Government took possession of a river under the statutory powers conferred by the Madras Rivers Conservancy Act and possession of certain lankas newly formed in the said river was demanded by the Zamindar who was entitled to them and the Government delayed delivering up possession of the said lankas for over a year after such demand :

Held, that the Zamindar was still not entitled to mesne profits for that year as he had not asked for permission to cultivate, as he ought to have done under S. 11 of the Madras Rivers Conservancy Act, and as the liability for damages under S. 16 of the said Act arises only on a wrongful refusal of such permission.

A. Krishnaswami Aiyar and *V. Govindarajachari* for Zemindar.

The Government Pleader for the Government.

N. S.

The Chief Justice and Madhavan Nair, J.
20th April, 1928.

L, P. A. No. 204 of 1925.

Insolvency—After-acquired properties of insolvent—Right of undischarged insolvent to maintain proceedings in court regarding.

Their Lordships referred the following question to a Full Bench :—

"Is it open to an undischarged insolvent to maintain proceedings in Court regarding his after-acquired properties subject to the right of the Official Receiver to intervene in such proceedings?"

V. Ramaswami Aiyar for *K. Rajah Aiyar* for Appellant.

S. T. Srinivasagopalachari and *R. Gopalaswami Aiyangar* for Respondent.

N. S.

Odgers, J.
23rd April, 1928. } C. R. P. Nos. 565 and 703 of 1927.

Civil Procedure Code, S. 152—*Decree against a person—Application for amendment to change the name into one with an* alias—*If can be granted.*

Where a decree was passed against one Ramachendrayya and it was sought to be amended into one against Ramachendrayya *alias* Chendrayya in order that execution might issue against the respondent on the ground that he went by both names :

Held, the petition was not maintainable under S. 152 of the C. P. Code as there was no clerical or arithmetical mistake nor an accidental slip or omission.

25 L. W. 102 and the cases cited therein distinguished as cases relating to the insertion of a wrong survey number by mistake where the identity of the property concerned was beyond dispute.

V. Suryanarayana for Petitioner.

V. Govindarajachari for Respondent.

N. S.

Phillips and Madhavan Nair, JJ.
26th April, 1928. } S. A. No. 7 of 1928.

Madras Local Boards Act, Ss. 104 (2) & (3) *and* 166—*Licence—Meaning of.*

The word "licence" used in S. 104 (3) of the Madras Local Boards Act refers to the licence specified in sub-clause (2) of the same section, *i.e.*, a licence issued by way of compounding toll-gate fees ; consequently, a licence issued under S. 166 of the Act to ply for hire or to take passengers is not a licence within the meaning of the word used in S. 104 (3) and a person who has obtained a licence under S. 166 is not entitled to claim exemption from payment of tolls.

T.M. Krishnaswami Aiyar for *K. Rajah Aiyar* and *R. Sundaralingam* for Appellant.

P. Venkatramana Rao and *P. K. Janakiraman* for Respondent.

N. S.

Devadoss, J.
16th April, 1928. } Crl. Rev. Case No. 828 of 1927.

Village Courts Act—Village panchayat court—Power to take bond from accused for appearance.

A village panchayat court has no power to take a bond from the accused to enforce his appearance on future adjourned dates, after the accused appears before the court in pursuance of the summons.

A. C. Sampath Aiyangar for Petitioner.

The Public Prosecutor for the Crown.

N. S.

Phillips, Ramesam and Madhavan Nair, JJ.
17th April, 1928. } C. M. A No. 209 of 1927.

Civil Procedure Code, Order 23, Rule 3—Pending suit—Reference to arbitration without order of court—Award not agreed to by the parties—If can be filed as an agreement.

The award passed by the arbitrators on a reference by the parties in a suit without the order of the court can be filed in court as an agreement or compromise of the suit under Order 23, Rule 3, C. P. Code, even though the parties do not agree to the award.

P. Somasundaram for Appellant.

T. M. Krishnaswami Aiyar for Respondent.

N. S.

The Chief Justice and Madhavan Nair, J.
17th April, 1928. } O. S. A. No. 121 of 1926.

Hindu Law—Joint family business—Trade carried on by manager of joint Hindu family—When binding on minors.

The test to find out whether a business started by the manager of a joint Hindu family is a joint business on behalf of the family or not is whether the adult co-parceners participated in the business or acquiesced in the same.

S. Doraiswami Aiyar for Appellant.

K. S. Krishnaswami Aiyangar for Respondent.

N.S.

The Chief Justice and Madhavan Nair, J.
18th April, 1928. } O. S. A. No. 6 of 1928.

Madras District Municipalities Act, Ss. 92 and 350—"Transact business"—Meaning of—Suit for refund of tax collected more than six months prior to the institution—Limitation.

The words "transact business" in Section 92 of the District Municipalities Act have the same interpretation as the words "carry on business" which occurred in the old Act of 1882, and must be interpreted according to the English decisions under the English Income Tax Act so as not to include any and every case where some business transaction takes place within the Municipal limits.

N R C

A suit for refund of profession tax collected more than six months prior to the institution of the suit on the ground that the tax has been illegally collected is in the nature of a suit for money had and received and consequently is not barred by limitation. The cause of action for such a suit is really based on the equity attaching to the parties who received the payment and the suit is not one based on any implied contract or tort.

T. M. Krishnaswami Aiyar for Appellant.

Vere Mockett and *R. N. Aiyangar* for Respondent.

N.S.

Devadoss, J.

19th April, 1928. } C. R. P. No. 562 of 1928.

Madras Local Boards Act, Ss. 56 and 57—Election enquiry rules—Rule No. 11—Members of board ceasing to be members for failure to attend meetings—Jurisdiction of District Judge to enquire into—Voting by ballot—Admissibility of oral evidence.

At the time of an election of a president to an Union Board objection was raised on behalf of one of the candidates that two of the members were not entitled to vote as they had lost their seats by failing to attend meetings for three consecutive months. The objection was overruled and one of the candidates was declared elected as president. Thereupon the defeated candidate put in a petition to the District Court to declare the election void. The District Court held that the two members who had participated in the election had no right to do so. Against this a Revision Petition was filed in the High Court.

Held (1) that the two alleged disqualified members having been restored to their offices by the board at a second meeting after they ceased to be members, they must be deemed to be qualified members to take part in the meeting at which the election was held ;

(2) That the question as to the disqualification of the members must be investigated on a petition presented by the board or by a member and the District Judge had no jurisdiction to decide this question ;

(3) The restoration of the members by the board was not *ultra vires* though it might be irregular ;

(4) That as the election was by a secret ballot the District Court acted illegally in taking oral evidence regarding the ballot ;

(5) That therefore the order of the District Court must be set aside.

T. R. Venkatarama Sastri and *K. S. Sankara Aiyar* for Petitioner.

T. M. Krishnaswami Aiyar and *N. S. Srinivasa Aiyar* for Respondent.

N. S.

Beasley, J.

19th April, 1928. } C. S. No. 197 of 1927.

Madras City Municipal Act—Places used for the storing of liquors—Right to levy license fees—Arbitrary increase of assessment—Legality.

The Corporation is empowered to levy an assessment for each place in which liquor has been stored by a company. But when the Corporation suddenly increased the assessment from Rs. 25 to Rs. 100 in respect of each place of storage;

Held that the increased assessment was made arbitrarily and was liable to be set aside in a suit by the Company against the Corporation.

Vere Mockett for Plaintiff.

S. Rangaswami Aiyangar and *R. Chakrapani* for Defendant.

N.S.

Kumaraswami Sastri and Reilly, JJ.
19th April, 1928.

A. S. Nos. 100 and 101 of 1925.

Limitation Act, Arts. 66 and 116—Registered mortgage—Personal covenant—Suit for enforcement of—Limitation.

The article of the Limitation Act applicable to a suit to enforce a personal covenant in a registered mortgage deed is Art. 116 and not Art. 66 and consequently the period of limitation is six years.

53 I.A. 134: 5 Pat. 585 : 51 M.L.J. 82 (P.C.), explained.

Case law reviewed.

G. Lakshmanna for Appellant.

A. Krishnaswami Aiyar, T.V. Venkatarama Aiyar, T.V. Ramanatha Aiyar and *M. Venkatasubbiah* for Respondents.

N.S.

Devadoss, J.
19th April, 1928.

Crl. R. C. Nos. 969 to 971 of 1927.

Criminal Procedure Code, Ss. 265 and 366—Bench Magistrates—Majority voting for conviction and minority for acquittal—Record prepared and judgment delivered by the President in the absence of the other magistrates—Judgment signed only by the President—Legality.

In a case tried by a bench of nine magistrates it appeared that, after the conclusion of the trial, votes were taken and five voted for the conviction while four were for acquittal; after the trial was over all the magistrates left the Court, and the President subsequently prepared the record and wrote the judgment and delivered the same in the presence of the complainant and the accused at about 8 p.m. in the absence of the other magistrates who had already gone away on account of the lateness of the hour.

Held, on revision, that, though the record and the judgment prepared and signed by the President was not illegal having regard to Section 366 of the Criminal Procedure Code, it was essential that at the time when the judgment was delivered all the magistrates should be present, and consequently the judgment in the present case is not a proper judgment and the action of the President amounted to an illegality and the conviction must be set aside and re-trial ordered.

V. L. Ethiraj and *A. Rangaswami Aiyangar* for Petitioner.

The Public Prosecutor for the Crown.

N.S.

Phillips and Odgers, JJ.
23rd April, 1928.
C. R. Ps. Nos. 1631 to 1635 of 1927.

Madras Hindu Religious Endowments Act, Ss. 2 and 84 (1)—Endowment board whether a Court—Temple declared to be public by the board—Application for declaration that Temple is private—Court-fee.

A temple was declared to be a public temple by the Religious Endowments Board. Thereupon an application was made to set aside the decision of the Board and for a declaration that the temple is a private temple.

Held, that the Religious Endowments Board was not a Court and consequently Art. 17 (1) of the Court-fees Act was not applicable but Art. 17 (a) (1) was the Art. which would apply.

K. Krishna Menon for Petitioner.

P. Venkataramana Rao for Respondent.

N S.

Ramesam, Waller and Jackson, JJ.
25th April, 1928.
Crl. R. C. No. 821 of 1927.

Crl. Procedure Code, S. 162—Oral statements made to Police conducting investigation—Admissibility of.

The words "such statements" in the latter part of S 162 of the Crl. Pro. Code include oral as well as written statements to the Police and they cannot be given in evidence in the trial in corroboration of the prosecution witness.

Nugent Grant and *C. Sambasiva Rao* for Petitioner.

The Public Prosecutor for the Crown.

[END OF VOL. LIV]